

Applicant Details

First Name	Alexis
Last Name	Acosta
Citizenship Status	U. S. Citizen
Email Address	acosta.a24@law.wlu.edu
Address	<div> <div>Address</div> <div> <div>Street</div> <div>205 FULLER ST</div> <div>City</div> <div>LEXINGTON</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>24450</div> <div>Country</div> <div>United States</div> </div> </div>
Contact Phone Number	8608691918

Applicant Education

BA/BS From	University of Hartford
Date of BA/BS	May 2020
JD/LLB From	Washington and Lee University School of Law
	http://www.law.wlu.edu
Date of JD/LLB	May 20, 2024
Class Rank	Below 50%
Does the law school have a Law Review/Journal?	Yes
Law Review/Journal	No
Moot Court Experience	Yes
Moot Court Name(s)	Uvaldo Herrera National Moot Court Competition

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **Yes**

Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Baluart, David

BaluartD@wlu.edu

Stewart, Erin

erinstewart@cfjj.org

541-727-2404

Hasbrouck, Brandon

bhasbrouck@wlu.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Alexis Acosta

190 W Nelson Street apt b Lexington, VA 24550 - acosta.a24@law.wlu.edu - (860) 869-1918

June 10, 2023

The Honorable Jamar K. Walker
U.S. District Court for the Eastern District of Virginia
600 Granby Street
Norfolk, Va 23510

Dear Judge Walker:

I am a third-year law student at Washington and Lee University School of Law writing to apply for a clerkship position in your chambers for the 2024 or any following term. I am the daughter of a Cuban refugee and have channeled my gratitude for the opportunities I have received in this country into a dedication to equal access to justice. I seek a clerkship in order to serve the court system while learning firsthand the ways in which it might be improved. I am excited about the opportunity to dive deeply into diverse set of cases within your chambers and gain a unique perspective within the legal field.

I am confident that I possess the research, writing, and advocacy skills necessary to excel as a law clerk. As a 1L Judicial Intern to U.S. District Judge Michael Urbanski, I wrote numerous opinions on compassionate release matters. To produce these opinions, I researched case dockets focusing on sentencing. In this experience I developed a passion for legal research and writing. In my Habeas Corpus coursework, I had the opportunity to explore the gravity of trial decisions on the appellate processes by researching and writing a state Habeas claim for a simulated client which gave me experience solving complex legal issues. Most recently, in my Refugee Protection Practicum, I represented an asylum-seeking client facing removal proceedings. As I explored arguments on behalf of my client, I anticipated opposing arguments in order to write a comprehensive brief in support of his asylum claim. My practical and academic experience focused on trial courtroom proceedings will provide a firm foundation for my work assisting with the matters before you.

I will bring additional experience to the challenges presented by the matters before you. This summer I will continue both my written and oral advocacy at Harvard's Legal Aid Bureau, where I will submit written documents on behalf of my clients and represent them in court proceedings. During the 2023-24 academic year I will serve as a Judicial Extern in the chambers of Juvenile and Domestic Relations Court Judge Frank Rogers, preparing bench memoranda and observing court proceedings. I expect these experiences will further prepare me to assist with the work conducted in your chambers.

I am committed to meaningfully contributing to your chambers in a judicial clerkship. I would greatly appreciate an opportunity to meet with you to discuss my interest in this position. Thank you for your time and consideration.

Respectfully,



Alexis Acosta

Alexis Acosta

150 Country Squire Drive Unit 3114, Cromwell CT, 06416 | acosta.a24@law.wlu.edu | (860) 869-1918

EDUCATION

Washington and Lee University School of Law, Lexington, VA

Juris Doctor Candidate, May 2024. GPA: 3.464 (Top 45%)

Competitions: HNBA Uvaldo Herrera National Moot Court 2022 Competition, Competitor

John W. Davis Moot Court Competition, Participant

Robert J. Grey, Jr. Negotiations Competition, Participant

Research: Professor Brandon Hasbrouck (disparate effect of the harmless error rule on people of color)

Externship: The Honorable Frank W. Rogers III, Roanoke City Juvenile and Domestic Relations District Court

Activities: Latin American Law Students Association, President

Public Interest Law Students Association, Co-President

First Generation Student Union, Mentor

University of Hartford, West Hartford, CT

Bachelor of Science, *magna cum laude* in Health Science (Pre-Professional), May 2020

Honors: University Honors Program

Activities: Senior Resident Assistant; Hispanic and Latino Student Organization Club, Member

Research: Exploration of hydration practices and prolonged endurance exercise effects on plasma apelin concentrations, *Med Sci Sports Exerc.* 53 (8S): 348-349, August 2021

Machine learning in modeling the elusive daily water requirement, *Med Sci Sports Exerc.* 52(7S): 965, July 2020.

PROFESSIONAL EXPERIENCE

Harvard Legal Aid Bureau, Cambridge, MA

Student Attorney, May 2023 – August 2023

Citizens for Juvenile Justice, Boston, MA

Legal Intern, July 2022 – August 2022

- Researched and drafted portions of amicus brief dealing with the history of a defendant's rap lyrics being admitted into evidence against them for a charge of violent offenses.
- Instituted data collection method for public records request made to local police departments about their juvenile arrest and referrals from Boston Public School, analyzed received data.
- Summarized cases and public documents for internal use.

The Honorable Michael F. Urbanski, United States District Court (W.D. Va.), Roanoke, VA

Judicial Intern, May 2022 – July 2022

- Researched and wrote judicial opinions on pro se appeals on Compassionate Release and First Step Act.
- Researched motion in limine on admissibility of defendant's tattoo evidence and wrote memorandum opinion.
- Participated in chambers discussions, attended hearings and other judicial proceedings.

City Year Boston, Boston, MA

AmeriCorps Member, August 2020 – June 2021

- Provided classroom and tutoring support to 7th / 8th graders by assisting individual students and small groups.
- Presented students with daily activities self-awareness tasks and taught personal and academic goal-setting skills enabling students to set and track progress.

University of Hartford, West Hartford, CT

Research Assistant, January 2019 – May 2020

- Examined multiple scientific journals/databases to summarize previous research on the protein of study.
- Analyzed dietary records and systematically imputed research results into a collaboratively developed database.

INTERESTS

Caribbean travel and cuisine, sneaker fashion, fitness and exercise, and procedural dramas.

Print Date: 05/27/2023

Page: 1 of 2

Student: Alexis M. Acosta

WASHINGTON AND LEE
UNIVERSITY

Lexington, Virginia 24450-2116



SSN: XXX-XX-4802

Date of Birth: 08/29/XXXX

Entry Date: 08/30/2021

Academic Level: Law

2021-2022 Law Fall

08/30/2021 - 12/18/2021

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 109	CIVIL PROCEDURE	B+	4.00	4.00	13.32	
LAW 140	CONTRACTS	B+	4.00	4.00	13.32	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 165	LEGAL WRITING I	B+	2.00	2.00	6.66	
LAW 190	TORTS	A-	4.00	4.00	14.68	

Term GPA: 3.423

Totals:

14.50

14.50

49.65

Cumulative GPA: 3.423

Totals:

14.50

14.50

49.65

2021-2022 Law Spring

01/10/2022 - 04/29/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 130	CONSTITUTIONAL LAW	A-	4.00	4.00	14.68	
LAW 150	CRIMINAL LAW	B	3.00	3.00	9.00	
LAW 163	LEGAL RESEARCH	B+	0.50	0.50	1.67	
LAW 166	LEGAL WRITING II	B	2.00	2.00	6.00	
LAW 179	PROPERTY	B	4.00	4.00	12.00	
LAW 195	TRANSNATIONAL LAW	B-	3.00	3.00	8.01	

Term GPA: 3.112

Totals:

16.50

16.50

51.36

Cumulative GPA: 3.258

Totals:

31.00

31.00

101.00

2021-2022 Law Summer

05/22/2022 - 08/13/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 888	SUMMER INTERNSHIP	CR	1.00	1.00	0.00	

Term GPA: 0.000

Totals:

1.00

1.00

0.00

Cumulative GPA: 3.258

Totals:

32.00

32.00

101.00

Print Date: 05/27/2023

Page: 2 of 2

Student: Alexis M. Acosta

WASHINGTON AND LEE UNIVERSITY

Lexington, Virginia 24450-2116

**2022-2023 Law Fall**

08/29/2022 - 12/19/2022

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 653	Crimmigration Law Seminar	A-	2.00	2.00	7.34	
LAW 656	Critical Race Theory Seminar	A	2.00	2.00	8.00	
LAW 685	Evidence	A-	3.00	3.00	11.01	
LAW 733	Criminal Procedure: Investigation	A-	3.00	3.00	11.01	
LAW 806	Habeas Corpus Practicum	A-	3.00	3.00	11.01	
Term GPA: 3.720		Totals:	13.00	13.00	48.37	
Cumulative GPA: 3.394		Totals:	45.00	45.00	149.37	

2022-2023 Law Spring

01/09/2023 - 04/28/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 690	Professional Responsibility	A-	3.00	3.00	11.01	
LAW 701	Administrative Law	B+	3.00	3.00	9.99	
LAW 731	Immigration Law	A	3.00	3.00	12.00	
LAW 828	Trial Advocacy Practicum	A-	3.00	3.00	11.01	
LAW 831	Refugee Protection Practicum	A-	3.00	3.00	11.01	
Term GPA: 3.668		Totals:	15.00	15.00	55.02	
Cumulative GPA: 3.464		Totals:	60.00	60.00	204.39	

2023-2024 Law Fall

08/28/2023 - 12/18/2023

Course	Course Title	Grade	Credit Att	Credit Earn	Grade Pts	Repeat
LAW 700	Federal Jurisdiction and Procedure		3.00	0.00	0.00	
LAW 707L	Skills Immersion: Litigation		2.00	0.00	0.00	
LAW 766	Decedents' Estates and Trusts		3.00	0.00	0.00	
LAW 811	Appellate Advocacy Practicum		4.00	0.00	0.00	
LAW 942	State Judicial Externship		2.00	0.00	0.00	
LAW 942FP	State Judicial Externship: Field Placement		2.00	0.00	0.00	
Term GPA: 0.000		Totals:	16.00	0.00	0.00	
Cumulative GPA: 3.464		Totals:	60.00	60.00	204.39	

Law Totals	Credit Att	Credit Earn	Cumulative GPA
Washington & Lee:	60.00	60.00	3.464
External:	0.00	0.00	
Overall:	60.00	60.00	3.464

Program: Law

End of Official Transcript

Display Transcript

07/19/2022 11:52



This is NOT an official transcript. Courses which are in progress may also be included on this transcript.

[Institution Credit](#) [Transcript Totals](#)**Transcript Data****STUDENT INFORMATION****Name :** Alexis M. Acosta**Curriculum Information****Current Program**

Bachelor of Science

College:Educ., Nursing & Health
Prof.**Major and Department:**Health Science /pre-
profession, Health
Sciences

This is NOT an Official Transcript

DEGREES AWARDED**Sought:** Bachelor of Arts **Degree Date:****Curriculum Information****Primary Degree****Major:**

A & S / Exploratory

Awarded: Bachelor of
Science **Degree Date:** 05/17/2020**Institutional Honors:** Magna Cum Laude, With University Honors**Curriculum Information****Primary Degree****Major:**

Health Science /pre-profession

INSTITUTION CREDIT [-Top-](#)**Term: Fall Term 2016****Academic Standing:****Additional Standing:** Deans List

Subject	Course	Level	Title	Grade	Credit Hours	Quality R Points
CH	110	01	College Chemistry	C	4.000	8.00
DIA	100	01	Dialogue	P	1.000	0.00
FYS	100	01	Emerging Media&Ntwrk Society	A	3.000	12.00
HON	170	01	Pwr&Politics Amer (HON POL110)	A-	3.000	11.01
M	116	01	Contemporary Mathematics	A	3.000	12.00
PSY	105	01	Introduction to Psychology	A	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	17.000	17.000	17.000	16.000	55.01	3.43
Cumulative:	17.000	17.000	17.000	16.000	55.01	3.43

Unofficial Transcript

Term: Spring Term 2017

Academic Standing:

Additional Standing: Deans List

Subject	Course Level	Title	Grade	Credit Hours	Quality Points	R
BIO	122	01	Introductory Biology I	B+	4.000	13.32
CH	111	01	College Chemistry	C+	4.000	9.32
CMM	110	01	Communication in Digital Age	A-	3.000	11.01
HON	182	01	Acad. Writing I (HON WRT 110)	B+	3.000	9.99
HS	111	01	Health Care Concepts	A	3.000	12.00
PPS	100	01	PreMed Professions Studies I	P	1.000	0.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	18.000	18.000	18.000	17.000	55.64	3.27
Cumulative:	35.000	35.000	35.000	33.000	110.65	3.35

Unofficial Transcript

Term: Fall Term 2017

Academic Standing:

Additional Standing: Deans List

Subject	Course Level	Title	Grade	Credit Hours	Quality Points	R
AUCS	340	01	Ethics in the Professions	A-	3.000	11.01
BIO	212	01	Anatomy and Physiology I	B	4.000	12.00
CH	230	01	Organic Chemistry I	B	4.000	12.00
EDG	310	01	Residential Ed.&College Studnt	A	2.000	8.00
M	140	01	Precalc w/Trigonometry	B+	4.000	13.32

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	17.000	17.000	17.000	17.000	56.33	3.31
Cumulative:	52.000	52.000	52.000	50.000	166.98	3.33

Unofficial Transcript

Term: Winter Term 2018

Academic Standing:

Subject	Course Level	Title	Grade	Credit Hours	Quality Points	R
HS	222	01	Medical Terminology	A	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	3.000	3.000	3.000	3.000	12.00	4.00
Cumulative:	55.000	55.000	55.000	53.000	178.98	3.37

Unofficial Transcript

Term: Spring Term 2018

Academic Standing:

Additional Standing: Deans List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
AUCA	140	01	Creativity:Dynamic Artistic Ex	A	3.000	12.00
BIO	272W	01	Genetics	B+	3.000	9.99
BIO	273W	01	Genetics Laboratory	A-	1.000	3.67
CH	231	01	Organic Chemistry II	B+	4.000	13.32
HON	183	01	Acad. Writing II (HON WRT 111)	A	3.000	12.00
M	114	01	Everyday Statistics	A	3.000	12.00
PPS	200	01	PreMed Professions Studies II	P	1.000	0.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	18.000	18.000	18.000	17.000	62.98	3.70
Cumulative:	73.000	73.000	73.000	70.000	241.96	3.45

Unofficial Transcript

Term: Summer Term 2018

Academic Standing:

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
BIO	123	01	Introductory Biology II	A	4.000	16.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	4.000	4.000	4.000	4.000	16.00	4.00
Cumulative:	77.000	77.000	77.000	74.000	257.96	3.48

Unofficial Transcript

Term: Fall Term 2018

Term Comments: Presidents Honors

Academic Standing:

Additional Standing: Deans List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
BIO	352	01	Molecular Cell Biology	A-	4.000	14.68
HS	370	01	Princ. of Exercise Science-HON	A	3.000	12.00
PHY	120	01	Algebra-Based Physics I	A	4.000	16.00
PPS	300	01	Premed Professions Studies III	A	1.000	4.00
UISS	110D	01	Hunger:Scarcity&Choice(AUCC)	A	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	58.68	3.91
Cumulative:	92.000	92.000	92.000	89.000	316.64	3.55

Unofficial Transcript

Term: Spring Term 2019

Term Comments: Presidents Honors

Academic Standing:

Additional Standing: Deans List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
BIO	444	01	Biochemistry I	A	3.000	12.00
BIO	445	01	Biochemistry Laboratory	A	2.000	8.00
HS	480	01	Indep. Study in Health Science	A	3.000	12.00 I
PHY	121	01	Algebra-Based Physics II	A	4.000	16.00
SPA	111	01	Elementary Spanish II	A	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	15.000	15.000	15.000	15.000	60.00	4.00
Cumulative:	107.000	107.000	107.000	104.000	376.64	3.62

Unofficial Transcript

Term: Fall Term 2019

Term Comments: Presidents Honors

Academic Standing:

Additional Standing: Deans List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
BIO	442	01	Microbiology	A	4.000	16.00
HON	493	01	Honors Research	A	3.000	12.00
HS	340	01	Intro to Public Health-HON	A	3.000	12.00
HS	480	01	Indep. Study in Health Science	A	3.000	12.00 I
PHI	110	01	Intro History of W. Philosophy	A	3.000	12.00
UISC	180	01	W.Herit:SocJust.(AUCW 180)	A-	3.000	11.01

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	19.000	19.000	19.000	19.000	75.01	3.94
Cumulative:	126.000	126.000	126.000	123.000	451.65	3.67

Unofficial Transcript

Term: Spring Term 2020

Term Comments: Presidents Honors

Academic Standing:

Additional Standing: Deans List

Subject	Course	Level	Title	Grade	Credit Hours	Quality Points
BIO	213	01	Anatomy and Physiology II	A	4.000	16.00
GS	100	01	Introduction to Gender Studies	A	3.000	12.00
HON	494W	01	Honors Thesis	A	3.000	12.00
HS	481	01	Indep.Study in Health Science	A	4.000	16.00
PHI	232	01	Biomedical Ethics	A	3.000	12.00

Term Totals (Undergraduate)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Current Term:	17.000	17.000	17.000	17.000	68.00	4.00
Cumulative:	143.000	143.000	143.000	140.000	519.65	3.71

Unofficial Transcript

TRANSCRIPT TOTALS (UNDERGRADUATE) [-Top-](#)

	Attempt Hours	Passed Hours	Earned Hours	GPA Hours	Quality Points	GPA
Total Institution:	143.000	143.000	143.000	140.000	519.65	3.71
Total Transfer:	0.000	0.000	0.000	0.000	0.00	0.00
Overall:	143.000	143.000	143.000	140.000	519.65	3.71

Unofficial Transcript

RELEASE: 8.7.1 UH

© 2022 Ellucian Company L.P. and its affiliates.

WASHINGTON AND LEE UNIVERSITY
SCHOOL OF LAW
LEXINGTON, VA 24450

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I write this letter in enthusiastic support of Ms. Alexis Acosta's application to serve as a law clerk in your chambers. I have worked closely with Ms. Acosta at Washington and Lee University School of Law (W&L Law), where I previously served as Associate Dean for Academic Affairs and currently serve as a Clinical Professor of Law and faculty advisor to the Latin American Law Students Association (LALSA). As a student leader, Ms. Acosta has been a joy to work with. I also have had the immense pleasure of teaching Ms. Acosta in both my Immigration Law survey course and my Refugee Protection Practicum. Based on my experience with Ms. Acosta, I write this letter to highlight her intelligence, passion for justice, and commitment to excellence. I recommend her to you without reservation.

I can attest to Ms. Acosta's legal acumen, which I had direct exposure to when she was a student in my Immigration Law class in spring 2023. Ms. Acosta impressed me with her preparation for class, her engagement with the material, and her thoughtful contributions to class discussion. Topics in Immigration Law vary from complex constitutional doctrine to heavy statutory analysis, often accompanied by policy discussions and examinations of socio-political norms. Ms. Acosta consistently demonstrated her mastery of complex material during class and in office hours, which she frequented to ensure her thorough understanding of each class. On exams, she demonstrated her ability to extract legal rules from cases and apply them to complex factual scenarios. I was thoroughly impressed with her performance.

I also taught Ms. Acosta asylum law and supervised her legal work in my Refugee Protection Practicum. In that practicum, I assigned a refugee client to each of the students for limited representation and instructed them to help their clients file an asylum application with immigration court and prepare supporting materials for their client, including a declaration, an evidence index, and a legal brief. As part of her work in the Refugee Protection Practicum, Ms. Acosta also traveled with me to Mexico City to work with a refugee clinic at a Mexican university. Ms. Acosta contributed substantial research to a presentation we delivered to refugee clinic students and staff. In her client work, Ms. Acosta honed her lawyering skills across language and cultural difference, and developed a very powerful declaration for her client, as well as a robust evidentiary record and strong, persuasive legal arguments.

In addition to being a bright, passionate, and driven lawyer-to-be, Ms. Acosta is a wonderful person who I have really enjoyed working with. She always approached class with a strong sense of self, and demonstrated humility, a good sense of humor, and a willingness to share her experience and perspectives to support her classmates. Ms. Acosta always brightens my office with her visits, and I genuinely appreciate the personal connection we have developed. I am certain that she would make an excellent addition to your chambers and that you would enjoy working with her in the same manner I have.

Please don't hesitate to contact me with any questions about Ms. Acosta's candidacy.

Sincerely,

David C. Baluarte
Clinical Professor of Law

David Baluarte - BaluarteD@wlu.edu

Advocating for a fair and effective juvenile justice system in Massachusetts

44 School Street, Suite 415, Boston, MA 02108
617.338.1050 | cfjj@cfjj.org | www.cfjj.org



To whom it may concern:

It is with great pleasure that Citizens for Juvenile Justice (CfJJ) writes this letter in recommendation of Alexis Acosta. Alexis was an intern for CfJJ from July 15th, 2022 to August 18th, 2022. During this time, she proved herself to be an extraordinary researcher and writer, as well as an incredible advocate for system-involved young people. It was a joy to work with Alexis.

While working at CfJJ, Alexis demonstrated professionalism in her attention to detail and excellent writing skills. Alexis was always on time to meetings and treated everyone in the office with kindness. She submitted projects in a timely fashion and managed her time effectively and efficiently. In every meeting, Alexis showed passion for increasing equity in the juvenile justice system and a curiosity for the legal issues presented to her.

Alexis worked on a variety of projects during her internship. She wrote an excellent piece for JJ News, a newsletter CfJJ sends out routinely. She also completed research and participated in the drafting of an amicus brief focused on the usage of rap lyrics against defendants at trial. Specifically, Alexis analyzed the recognition of implicit and explicit bias in Massachusetts' courts. The amicus brief Alexis worked on was filed with the Massachusetts Supreme Judicial Court.

Alexis also helped in the management of public record requests sent to police departments across Massachusetts, seeking accurate school-based-arrest data. This data is essential in CfJJ's work to increase data transparency and understand racial disparities in youth arrests. Alexis took on every project she worked on with ease and passion for the work we do.

During her internship, Alexis worked well with CfJJ staff and other legal interns. Alexis demonstrated an impressive ability to work on a team and share responsibilities with others.

It is for these reasons that we provide our highest recommendation. I am available to speak further on Alexis' qualifications at the email and phone number listed below.

Respectfully submitted,
Erin Stewart, J.D.
Citizens for Juvenile Justice
44 School Street, Suite 415
Boston, MA 02108
617-338-1050
Erinstewart@cfjj.org

June 10, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I most enthusiastically recommend Alexis Acosta ("Lexi") for a judicial clerkship. Lexi is not only an extraordinary student—one of the most talented and gifted advocates that I have had the pleasure to teach or work with—but a great person. Lexi is a truly impressive young professional that possesses a brilliant mind. As background, I have had Lexi as a student in my critical race theory seminar.

In my critical race theory seminar (CRT), Lexi proved herself to be a gifted thinker and a phenomenal writer. In this course, we identify how law perpetuates racial hierarchies and think deeply how to dismantle these structures through countermeasures—constitutional and legal interpretation, legislative and corporate policy changes, and executive action. This course is rich in its ability to get students proximate to our most vulnerable populations. As you can imagine, CRT is a very challenging course because it requires students to confront unsettling and uncomfortable topics that range from affirmative action to criminal justice transformation to civil rights. The navigation of these broad areas of law demands that we tackle privilege, implicit bias, and the social construction of race. This is a significant undertaking for anyone. Lexi not only rose to the occasion but she also demonstrated a profound ability to understand complex areas of the law and suggest possible solutions. This is precisely the work that law clerks must engage in to provide great counsel to their judges. In all of her work, Lexi would engage in such powerful storytelling to illuminate problems—such as predatory policing—that directly impacts Black women. Lexi would demonstrate in her oral and written advocacy how intersectionality is an important analytical framework to situate problems that impact Black women who are often forgotten in our political, social, and legal dialogue, from medical decisions, to appearance, to domestic abuse, to employment and so many other spaces. Lexi was also an excellent colleague to other students. When other students were presenting papers, Lexi provided insightful comments that made other students papers much better.

Lexi is a gifted thinker and a phenomenal writer. I want to briefly discuss Lexi's final project, which was a tour de force and nothing short of brilliant. Lexi's seminar paper examined the American penal system, which the United States Supreme Court called "a system of pleas." Plea bargaining has been instrumental to mass incarceration. The plea bargaining system, as Lexi documents, is intensely coercive when leveraged against individuals but noted, as a few other scholars have, that the system pleas has a structural weak point. That is, what happens if individuals act together to form a "plea bargaining union" and collectively they plead "not guilty." If done together, this act of resistance would bring the penal system to a halt. As Lexi demonstrates, courts and prosecutors simply do not have the resources to sustain mass incarceration while affording everyone accused of a crime the constitutionally guaranteed right to a trial. Lexi argues that because of the transformative and democratic power that plea bargaining unions would possess, they could be key to an abolitionist horizon for prison reform. Lexi then examines both the promise and limits of plea bargaining unions. This paper is a significant piece of scholarship, written at the level of a tenured law professor. It is absolutely fantastic and was certainly one of the top three papers ever produced by a student in my course—I have taught this course on four different occasions. Lexi received the highest grade in my class—an A! I should add that I have been so impressed with Lexi that I asked her to be my research assistant! She is going to be working on two projects for me this year examining prison abolition.

As a former law clerk to two judges—the Honorable Roger L. Gregory (4th Cir.) and the Honorable Emmet G. Sullivan (DDC)—I, more than most, understand what is expected of a law clerk: trustworthiness, dependability, and excellence. That is Lexi. Lexi exudes trustworthiness and reliability—she is a real self-starter with an intuitive grasp for what needs to be done and how. Lexi is also a person of integrity, perspective, and balance. Reflective and poised, she is always thinking of how to improve, but she also has mettle, confidence, and great tenacity to tackle difficult and thorny legal questions. Lexi thrives in interpersonal relations, and would mix respectfully with other law clerks and staff. I would trust her with any work product, no matter how sensitive, and have the utmost confidence that she would always conduct herself with dignity and discretion. More importantly, in my opinion, Lexi's compassion and passion separates her from most—she will work tirelessly to ensure that your bench memorandums are well researched and recommend the right result for the right reasons. That is excellence—excellence that she demonstrated throughout her career at Washington and Lee University School of Law.

In sum, I offer Lexi my most enthusiastic and unreserved recommendation. She will be an amazing law clerk. It is my sincere hope that she has the opportunity and privilege to work for you, Judge.

Please feel free to reach out to me at hasbrouck@wlu.edu or 914-443-1324 should you have any questions.

Sincerely,

Brandon Hasbrouck
Associate Professor of Law

Brandon Hasbrouck - hasbrouck@wlu.edu

This writing sample was written as part of my coursework for my Habeas Corpus class, it based on the facts of a real case that my professors had argued and won. The names and court information have been changed and redacted for confidentiality purposes.

The brief raises two issues. First, it argues that the defendant should be granted relief under *Brady v. Maryland* and *Napue v. Illinois* because the prosecution knowingly presented false testimony from a DNA expert and subsequently failing to correct it on the record. Second, it contends that defense counsel was ineffective in addressing the DNA evidence presented at trial and thus violated the Sixth Amendment by failing to provide a reasonable defense.

This submission represents my own work, and my professors gave me permission to use it as a writing sample.

██████████
IN THE CIRCUIT COURT
FOR ██████████

Civil Case No: _____
(Criminal Case No. ██████████)

JOHN HUDDDEL,
Petitioner,

v.

██████████,
Director of the ██████████ Department of Correction,
Respondent.

PETITION FOR A WRIT OF HABEAS CORPUS
SUBJECT TO AMENDMENT

Filed by:

Alexis Maria Acosta
██████████ Bar No. 13131
Alexis & Maria, PLLC
1133 Bloomfield St,
Lexington, ██████████ 11311
(860) 111-1313 (telephone)

Pro bono Counsel for Mr. Huddel

INTRODUCTION

On May 7, 2013, Ms. Boyd entered an ATM to withdraw money. While inside, she was robbed at gunpoint by a male wearing dark clothing, dark shoes, and a mask. Mr. King subsequently found the mask allegedly used in the robbery in a dumpster and turned it over to the police. A collective sample swab of the DNA on the mask was taken by crime scene officials and tested for a match. The results showed three contributors of DNA to the sample. The first contributor was Mr. Huddel, the defendant in the case. Huddel testified that he had found the mask while waiting to talk to his ex-girlfriend, picked it up, and put it back down in the dumpster. The second contributor was Mr. King. Lastly, the third contributor remains unknown. The prosecution's DNA experts at trial discounted this third contributor as only a possibility. As a result, Huddel's trial counsel failed to argue this unknown contributor was a possible alternative defendant. The only other evidence offered by the state against Mr. Huddel was vague cellphone location data.

Huddel was arrested and charged with felony robbery and the use of a firearm in the commission of a robbery. Tr. at 3. The jury wrongfully convicted Huddel as a result of being denied the truth of the DNA analysis. Furthermore, the prosecution knowingly admitted false testimony and Huddel was denied his Sixth Amendment right to counsel. As such, he remains unjustly imprisoned, and the writ of certiorari should be granted.

STANDARD OF REVIEW

The petitioner has the burden to prove the claims asserted by a preponderance of the evidence when making a collateral attack on a judgment of conviction. *Green v. Young*, 264 Va. 604, 608 (Va. 2002). The court may grant discovery for good cause. Va. Code §§ 8.01-654(a), B(4); 8.01-660.

FALSE TESTIMONY PRESENTED AND FAILURE TO EFFECTIVELY CROSS**Claim I: The Prosecution Knowingly Presented False Testimony by Soliciting Such False Testimony from Their Laboratory Expert and Failing to Correct it on the Record.**

The writ should be granted because the Commonwealth failed to disclose material exculpatory evidence. Together, *Brady v. Maryland* and *Strickler v. Greene* hold that even if the defense does not request such evidence, the prosecution has a duty to disclose material exculpatory evidence to the defense. *Brady v. Maryland*, 373 U.S. 83 (1963); *Strickler v. Greene*, 527 U.S. 263 (1999). A conviction acquired through the knowing use of perjured testimony by the prosecution violates due process, regardless of whether the prosecution solicited testimony it knew to be false or simply allowed such testimony to pass uncorrected. *Id.* A *Napue* violation occurs when the prosecution offers false testimony that the prosecution knows it to be false, and it likely affects the jury's judgment on the issue of guilt. *Napue v. Illinois*, 360 U.S. 264 (1959).

A. The Commonwealth Knowingly Presented False Testimony from DFS Analyst Danielle Hawkins.

At trial, the Commonwealth's DNA expert, Ms. Danielle Hawkins, was asked if the combination sample taken from the mask showed that there could have been other individuals' DNA, besides the Defendant and Mr. King's, on the mask when the sample was taken. Tr. February 16, 2016, at 184. Rather than answering directly, the expert explained that if the court wanted to know whether there were more contributors, investigators would have had to submit additional samples of possible contributors to be matched to the combination sample. *Id.* Defense counsel asked Ms. Hawkins again if there "could have been more people that handled the mask?" *Id.* at 185. This time, Ms. Hawkins answered that it was "a possibility." *Id.* The first answer was misleading, and the second answer was false. This was perjured testimony because the DNA

results show there are conclusively at least three contributors of DNA to the mask profile, as Mr. Ungle will testify. Exhibit A.

Ms. Hawkins's first answer (about needing more samples to determine additional contributors) is false because the results themselves show a third contributor at locations ("loci") D3S1358, TH01, D21S11, D18S5, D5S818, and D13S317. Exhibit A. DNA results consist of alleles at specific genetic locations. *Id.* People have two alleles at each locus. *Id.* Each person inherits one DNA marker from their biological mother and one from their biological father. *Id.* If the DNA from both parents matches at the same locus, that individual will report one allele at that locus. *Id.* If the biological parents' DNA does not match at a particular locus, then an individual will report two different genetic markers. *Id.* Where the results show five DNA types at multiple different loci, as in this case, there must be at least three contributors to the sample because people generally have no more than two DNA types at a location. *Id.* The D3S1358, TH01, D21S11, and D18S51 locations each show five different results and lead to the inescapable conclusion that there were at least three separate contributors of DNA. *Id.*

The D5S818 locus further indicates the presence of a third contributor. The D5S818 results show a result of "11, 12, 13" whereas Huddel's and King's results only show "12, 13" and "12" respectively. Exhibit B. As a result, the "11" result must have come from a third contributor whose DNA was not tested and compared to the mask's collection sample. Exhibit A ¶ 11.

Further evidence of a third contributor is at location D13S317, where the results from the mask are "8, 11, 12"; King's results show 11, and Huddel's 12. Exhibit B. Thus, it is almost certain that a third contributor exists because the result of "8" does not match either known contributor (King or Huddel);. Exhibit A ¶ 12.

The results of the DNA evidence at loci D3S1358, TH01, D21S11, D18S5, D5S818, and D13S317 determine that there was no need for more tests to show that there was a third contributor. Furthermore, the results provide multiple points that could only occur if a third contributor exists. *Id.* ¶¶ 9-11.

Ms. Hawkins's second answer was that there was "a possibility" of more than the two contributors to the sample of DNA found on the mask. Tr. at 185. Again, this answer is false because there are conclusively at least three contributors to the combined sample. Additionally, Mr. Ungle will testify that a reasonable DNA expert should have been able to read the results and come to this conclusion. Exhibit A.

Most convincingly, this evidence is false because the certificate of analysis the Commonwealth submitted into evidence states that the collective mask sample "is a mixture of three unknown contributors." Exhibit B. Thus, it should have been apparent to the prosecution that Ms. Hawkins's testimony was false. This is especially true considering that the prosecution itself entered the certificate into the record.

B. The Prosecution Knew or Should Have Known Ms. Hawkins's Testimony Was False.

It is the individual prosecutor's duty to learn of any favorable evidence to the defendant known to others acting on the government's behalf in the case. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). This is in furtherance of the defendant's Due Process rights and to avoid a *Brady* Violation. *Kyles* calls for the extension of the prosecution's duty to disclose evidence known by law enforcement, this duty to disclose should extend to Laboratory Experts. *Id.* Similarly, as part of the investigatory process of a case as law enforcement, the prosecution should be charged with knowing what their Laboratory experts know and charged with disclosing what is favorable to the defendant.

Hawkins's testimony is at best misleading and almost certainly false. Ms. Hawkins was working for the Commonwealth in her capacity as a Forensic Scientist at the Northern Laboratory of the ██████ Department of Forensic Science. Tr. at 159. As a Commonwealth employee, it was the prosecution's duty to ensure that the testimony proffered by their witness was accurate. *U.S. v. Bagley*, 473 U.S. 667, 679 (1985); *Mooney v. Holohan*, 294 U.S. 103, 113 (1935). Moreover, the ██████ County forensic scientists addressed the Certificates of Analysis to the ██████ County Police Department. Police are agents acting on the government's behalf. *Kyles v. Whitley*, 514 U.S. at 437-38.

Additionally, it is unlikely that the Prosecutor would have tried a case and placed great emphasis on DNA evidence at trial without sitting down with their expert, to determining the correct interpretation of the results, and thoroughly reviewing the results before trial. Also, the prosecution admitted the certificate of analysis, and it is unlikely that the prosecution would try this case without reading the certificate they submitted.

The Prosecutor further aggravated the false testimony in his opening statement. The Prosecutor alleges that one DNA profile, other than King's, contributed to the collective mask sample, and this other contributor was unknown. That unknown sample was of the person who "committed the robbery, and that's Mr. Huddel's DNA." Tr. at 87. The Defendant's DNA was not an unknown. His DNA was tested in sequence with Mr. King's, and there was not just one more profile in addition to Mr. King's. There were two. Add cite here. Thus, the prosecution should have known that Ms. Hawkins's testimony and the prosecutor's opening statements were a complete misrepresentation of the results.

C. The False Expert Testimony by Ms. Hawkins was Material Because it Likely Affected the Judgment of the Jury.

The false expert testimony given by the Commonwealth DNA expert Ms. Hawkins was material because its introduction would be reasonably likely to affect the judgment of the jury. Undisclosed evidence is material when its cumulative effect is such that “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. *See United States v. White*, 238 F.3d 537, 540 (4th Cir. 2001) (citing *Kyles v. Whitley*, 514 U.S. 419, 433-34 (1995)). This DNA evidence, if it had been presented accurately to the jury, would be likely to affect its verdict because DNA evidence is highly persuasive and because it was a significant part of the Commonwealth’s case.

DNA evidence is highly persuasive to jurors. Paul C. Giannelli, Daubert and Forensic Science: The Pitfalls of Law Enforcement Control of Scientific Research, 2011 U. Ill. L. Rev. 53, 58 (2011). DNA evidence is held up as a gold standard in forensics because it was created with a stronger “scientific foundation than other methods of forensic analysis.” *Id.* In addition, DNA evidence is widely featured in media and pop culture, making it familiar to jurors in such a way that they expect DNA evidence at a criminal trial. *Id.* Further, it is argued that the general rigor of second-generation sciences, including DNA evidence, has an air of “mystic infallibility” with jurors who are decreasingly likely to inspect the evidence critically. See Erin Murphy, *The New Forensics: Criminal Justice, False Certainty, and the Second Generation of Scientific Evidence*, 95 Cal. L. Rev. 721, 769 (2007) (citing *United States v. Addison*, 498 F.2d 741, 744 (D.C. Cir 1974)). For instance, in one recent case where DNA evidence was persuasive, a juror remarked, “The DNA was kinda the sealer on the thing, You can’t really argue with science”). The accurate presentation of the DNA evidence or the assertion that Mr. Huddel wore the mask the night of the robbery would likely affect the jury’s evaluation because it would certainly cast doubt on the defendant’s guilt.

Moreover, the totality of the evidence against the defendant was far from overwhelming. Instead, the most convincing evidence -- the DNA -- would be significantly less probative against the defendant had it been stated accurately. That leaves the prosecution with an undescriptive eyewitness testimony, and cell phone records that detail the defendant's alleged location for times around the robbery but not at the time of the robbery itself. If the DNA evidence had been presented accurately, it would likely create enough doubt in the Commonwealth's case that the jury would find the defendant to be not guilty.

In conclusion, the DNA testimony by Ms. Hawkins was false. The prosecution was charged with knowing that it was false and correcting the false testimony. Lastly, had the DNA testimony been accurately portrayed, it would likely have affected the jury's considerations of guilt when looking at the limited probative evidence remaining against the Defendant.

Claim II: Trial Defense Counselor was Inefficient in Handling the DNA Evidence Presented at Trial to Provide a Reasonable Standard of Defense.

At trial, Defense Counselor did not provide a reasonable standard of defense because of his handling of the DNA evidence. A criminal defendant has a Sixth Amendment right to counsel. *Strickland v. Washington*, 466 U.S. 668, 684 (1984). However, the Supreme Court recognized in *Argersinger v. Hamlin* that just having an attorney stand beside the defendant is inadequate to protect his Sixth Amendment right. *Argersinger v. Hamlin*, 407 U.S. 25 (1972). Instead, a defendant is entitled to an attorney who plays a role necessary to ensure that the trial is fair. *Strickland*, 466 U.S. at 685. An attorney is not deficient when they provide "reasonably effective assistance" in accordance with the facts of the particular case and viewed at the time of counsel's conduct. *Id.* at 680-81, 687.

For a convicted defendant to bring a successful ineffective assistance of counsel (IAC) claim, the defendant must satisfy two prongs. *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). The first prong is “deficient performance,” or whether defense counsel’s representation “fell below an objective standard of reasonableness.” *Id.* The second prong is prejudice. A petitioner satisfies the prejudice prong if there was a reasonable probability but for the counsel’s unprofessional errors, the result of the proceeding would have been different. *Id.* Reasonable probability is a lower standard than preponderance of the evidence. *Holland v. Jackson*, 542 U.S. 649, 654 (2004).

IAC claims are considered with a strong presumption given to trial defense counsel. *Id.* at 689. Because “of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within a wide range of reasonable professional assistance.” *Id.* A defendant must overcome such presumption to prove that such decisions by trial counsel were not a sound trial strategy but rather an ineffective investigation or performance by counsel. *Id.* However, strategic choices made when less than a complete investigation is conducted “are reasonable precisely to the extent that reasonable professional judgments support the limitations on an investigation.” *Id.* at 691.

A. The Trial Defense Attorney was Deficient in His Performance and Handling of the DNA Evidence.

In this case, trial counsel performed deficiently when he failed to impeach the Commonwealth’s DNA expert Ms. Hawkins. Ms. Hawkins testified that first, more samples would have had to be tested to see if there were additional contributors. Trial Counsel again failed to impeach effectively when Ms. Hawkins testified that it was merely a possibility that there were additional contributors to the mask’s collective DNA sample. Reasonably effective defense counsel would have read the certificate of analysis, understood the DNA results, and

used that to cross-examine Ms. Hawkins at trial effectively. Specifically, had counsel crossed Ms. Hawkins with the written part of the certificate of analysis that states that the collective sample from the mask “is a mixture of three unknown contributors,” counsel could have successfully created doubt in Ms. Hawkins’s testimony and credibility. *U.S. v. White*, 238 F.3d 537, 541 (2001) (explaining that False testimony is material if “there is any reasonable likelihood that the false testimony could have affected the judgment of the jury”). A successful cross would potentially compel Ms. Hawkins to reverse or walk back her previous direct testimony. It follows that the trial counsel was deficient in both failing to prepare properly and identify the correct analysis of the DNA evidence.

Second, trial counsel was deficient to the extent that he knew the testimony by Ms. Hawkins was false. If counsel had effectively cross-examined Ms. Hawkins, the jury would hear the correct implications of the DNA evidence. Such deficiency is evaluated by looking at the practices and expiration of the legal community. *Padilla*, 559 U.S. at 366. The Supreme Court has long recognized the ABA Standards as reflecting prevailing norms, and where the practice of an attorney follows these norms, it is reasonable. *Id.*

The *ABA Standard on DNA Evidence* clearly states that “test results and their interpretation should be reported and presented in an accurate, fair, complete and clear manner.” ABA STANDARDS FOR CRIMINAL JUSTICE: DNA EVIDENCE 16-1.2 (AM. BAR ASS’N 2007). The evidence shows that Ms. Hawkins did not present the interpretation of the results in an accurate, fair, or complete manner when she testified that there was only a *possibility* of a third contributor to the sample, when the certificate itself said there were three contributors to the mask sample. Tr. at 185. Defense counsel should have known this because the correct analysis of the results so that he acted in accordance with the ABA Standard. Additionally, it was not fair to say that the

results themselves showed only a possibility of a third contributor when six loci results inevitably showed a third contributor to the mask sample. Exhibit A. Again, to act in accordance with the ABA Standard and the commonly known standard that Mr. Ungle will testify to, the trial counsel should have known how many contributors the results showed and the certificate concluded to be true.

It is not a strategic decision but rather deficient performance when a witness blatantly misleads the jury on the correct interpretation of the results and the defense attorney fails to impeach that witness. It would be deficient performance and show a lack of even the most minimal investigation had trial counsel not reviewed the evidence that the Commonwealth submitted to see the note stating there were three contributors. The DNA evidence was the single most important evidence against the defendant, and it would be more than reasonable and expected for an investigation that counsel would read not only the certificate but also speak to an expert about the proper interpretation of the results. As Mr. Ungle will testify, it is within his experience that defense attorneys can interpret DNA results or, at minimum, speak to an expert before trial to ensure they are familiar with the accurate interpretation. Exhibit A.

In addition, it could not have been a strategic decision for defense counsel to fail in continuing to cross Ms. Hawkins as he did because it left the jury with the impression that a third contributor was only a possibility. This testimony is false and prejudicial against the defendant, and as such, to know its falsity and decide to let the jury hear such a false interpretation without a counter-testimony was to be acting below the common standard as an advocate for the defendant. *See People v. Lafler*, 734 F.3d 503, 513 (6th Cir. 2013) (explaining failure to impeach the credibility of a key witness that counsel knows is testifying falsely is an egregious error). In summary, the trial counsel's performance was deficient because it was below common practices

and standards. Additionally, it could not have been a strategic decision because the investigation was not completed to a reasonable degree.

B. The Deficient Performance and Handling of the DNA Evidence by the Trial Defense Attorney Prejudiced the Defendant.

The *Strickland* court acknowledges that some errors will only have a trivial effect on the trial while others will alter the entire evidentiary picture. *Strickland*, 446 U.S. at 695-96. Ms. Huddel's testimony altered the entire evidentiary picture because the DNA evidence was the most direct evidence linking the Defendant to the scene of the crime. In addition, as said above, DNA is highly convincing to juries. If the DNA evidence had been presented accurately, it would have cast a significant amount of doubt into the Commonwealth's story at trial. The DNA results are not explained by the story the Defendant committed the crime and Mr. King just picked up the mask to turn it into the police. It is because the trial counsel either did not prepare sufficiently so he did not know that the evidence showed the third contributor or that the trial counsel did know the correct interpretation of the results but failed to impeach Ms. Hawkins on the stand. Had counsel been successful in his preparation and impeachment, he would have significantly decreased the probative nature of the DNA results and shown that the Commonwealth's explanation for the DNA results is, at best incomplete and, at worst, intentionally false.

Applicant Details

First Name	Henry
Middle Initial	L
Last Name	Adams
Citizenship Status	U. S. Citizen
Email Address	hla8nr@virginia.edu
Address	<div>Address Street 717 Madison Avenue City Charlottesville State/Territory Virginia Zip 22903 Country United States</div>
Contact Phone Number	6024039301

Applicant Education

BA/BS From	University of Michigan-Ann Arbor
Date of BA/BS	April 2017
JD/LLB From	University of Virginia School of Law
	http://www.law.virginia.edu
Date of JD/LLB	May 19, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Virginia Journal of International Law
Moot Court Experience	Yes
Moot Court Name(s)	Lile Moot Court Extramural Moot Court

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships **No**
Post-graduate Judicial Law Clerk **No**

Specialized Work Experience

Recommenders

Stetson, Catherine
cate.stetson@hoganlovells.com
Boudouris, Kathryn
kboudouris@law.virginia.edu
434-924-2522

Bayefsky, Rachel
rbayefsky@law.virginia.edu
(434) 924-5716

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Henry L. Adams

717 Madison Ave., Charlottesville, VA 22903 • (602) 403-9301 • hla8nr@virginia.edu

June 12, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am a rising third-year student at the University of Virginia School of Law, and I am writing to apply for a clerkship in your chambers beginning August of 2024. I expect to receive my J.D. in May of 2024.

Please find a copy of my resume and law school transcript enclosed. I have also enclosed as a writing sample an excerpt from my final paper for my Racial Justice and Law course, which evaluates the equal protection implications of felon disenfranchisement in Virginia. Finally, I have included letters of recommendation from Professor Rachel Bayefsky, Professor Cate Stetson, and Kate Boudouris.

If you have any questions or there is any other information I can provide regarding my application, please contact me at the above email or telephone number. Thank you for considering my application.

Sincerely,



Henry Adams

Henry L. Adams

717 Madison Ave., Charlottesville, VA 22903 • (602) 403-9301 • hla8nr@virginia.edu

EDUCATION

University of Virginia School of Law, Charlottesville, VA

J.D., Expected May 2024

- *Virginia Journal of International Law*, Notes Development Editor
- Extramural Moot Court, Co-President
- Student Bar Association, 3L Senator

University of Michigan, Ann Arbor, MI

B.A., Philosophy, Politics, & Economics, *B.A.*, Spanish, April 2017

- Thesis: *On National Identity and Nationalism in the Present Age*
- Interfraternity Council, President
- Sigma Phi Epsilon Fraternity, President

EXPERIENCE

Kirkland & Ellis LLP, Chicago, IL

Litigation Summer Associate, May 2023 – Present

Charlottesville-Albemarle Public Defender Office, Charlottesville, VA

Legal Intern, May 2022 – July 2022

- Researched legal issues and reviewed discovery in pending cases for supervising attorneys
- Participated in development of litigation strategy, interviewed clients and potential witnesses

Lakeshore Legal Aid, Detroit, MI

Housing Legal Assistant, November 2020 – July 2021

- Drafted pleadings and corresponded via email with clients and opposing counsel
- Attended landlord-tenant court hearings weekly to perform initial client interviews

Jalen Rose Leadership Academy, Detroit, MI

Spanish Teacher, Advisor, August 2017 – July 2020; *Teach For America*, May 2017 – June 2019

- Created rigorous community-responsive curricula and materials for Spanish I and II
- Counseled and mentored sixteen students from tenth grade through graduation and developed strong, trusting relationships with them and their families
- Founded and supervised the Student Government program
- Co-founded, fundraised for, and coached the baseball program

Paul Hastings LLP, Washington, DC

Support Operations Intern, June 2016 – August 2016

- Assisted with citation checks and preparing court documents for filing

Hutchings Automotive Products, Cartago, Costa Rica

Quality Control Intern, July 2015 – August 2015

- Supervised employees in a factory with nearly exclusive Spanish communication

New York Pizza Depot, Ann Arbor, MI

Server/Cashier, September 2014 – May 2016

PERSONAL

Languages: Spanish (Fluent)

Interests: Detroit sports, law school softball, golf, “Jeopardy!”, and live music anywhere

UNIVERSITY OF VIRGINIA
SCHOOL OF LAW

Name: Henry Adams

Date: June 06, 2023

Record ID: hla8nr

This is a report of law and selected non-law course work (including credits earned). This is not an official transcript.

Due to the global COVID-19 pandemic, the Law faculty imposed mandatory Credit/No Credit grading for all graded classes completed after March 18 in the spring 2020 term.

FALL 2021

LAW	6000	Civil Procedure	4	B+	Bamzai,Aditya
LAW	6002	Contracts	4	B+	Hellman,Deborah
LAW	6003	Criminal Law	3	B+	Coughlin,Anne M
LAW	6004	Legal Research and Writing I	1	S	Buck,Donna Ruth
LAW	6007	Torts	4	B+	Abraham,Kenneth S

SPRING 2022

LAW	7123	Class Actions/Aggregate Litgtn	3	A-	Ballenger,James Scott
LAW	6001	Constitutional Law	4	B+	Solum,Lawrence
LAW	6104	Evidence	3	A-	Schauer,Frederick
LAW	6005	Lgl Research & Writing II (YR)	2	S	Buck,Donna Ruth
LAW	6006	Property	4	A-	Nicoletti,Cynthia Lisa

FALL 2022

LAW	9298	Appellate Practice	3	A-	Stetson,Catherine Emily
LAW	7017	Con Law II: Religious Liberty	3	A-	Schwartzman,Micah Jacob
LAW	7019	Criminal Investigation	4	B+	Coughlin,Anne M
LAW	6105	Federal Courts	4	A-	Bayefsky,Rachel

SPRING 2023

LAW	8000	Advanced Legal Research	2	A-	Boudouris,Kathryn Lee
LAW	8003	Civil Rights Litigation	3	A	Frampton,Thomas Ward
LAW	7018	Criminal Adjudication	3	A-	Frampton,Thomas Ward
LAW	7062	Legislation	4	A-	Nelson,Caleb E
LAW	7089	Racial Justice and Law	3	A-	Forde-Mazrui,Kim A

Hogan Lovells US LLP
555 Thirteenth Street, NW
Washington, DC 20004

[Posted on OSCAR]
June 11, 2023

Re: Henry Adams

Dear Judge:

I write in support of Henry Adams's application for a clerkship in your chambers. As a practicing appellate lawyer and a former trial and appellate clerk myself, I see in Henry the makings of an excellent law clerk.

Henry was a student in my Appellate Practice seminar at the University of Virginia School of Law in the Fall of 2022. My Appellate Practice seminar was designed, among other things, to simulate not just aspects of appellate practice, but also aspects of an appellate clerkship. Each student was assigned a then-pending 1292(b) federal appeal to handle, either as appellant/petitioner or appellee/respondent, and a second 1292(b) appeal in which to serve as a judge. (I concluded that 1292(b) appeals, having already been certified to be a close and difficult question, would provide good fodder for both sides of the "v.") In addition to writing portions of briefs, proposing edits to and discussing each other's writing in class, and presenting oral arguments, the students examined standards of review, threshold issues that may preclude appellate review, judicial decisionmaking, and other critical appellate fundamentals. I asked the students to prepare and ask questions of their colleagues during oral advocacy exercises. And as their last assignment, I asked each student to draft an opinion in the case in which they had served as a judge.

Drafting an opinion, as you well know, requires a different tone and approach than drafting a brief. For a law student, both types of drafting can be a challenge, each in its own way. But even as a second-year student in a class heavily stocked with third-years, Henry showed great strength in his written work. His draft portions of a brief, involving a then-pending Sixth Circuit appeal arising from the Flint water crisis, showed good intuition about what facts helped drive the party narrative, versus what can take more of a back seat. And his draft opinion, in a then-pending First Circuit case arising under the TCPA, was similarly strong, including the nuanced relief he chose to grant: a remand for additional inquiry into another element of the TCPA's text, rather than a flat affirmance or reversal as many of his classmates chose.

Henry is also a lovely person; he is thoughtful and warm, and was always very supportive of his classmates during discussions and oral advocacy exercises. I can see him knitting in seamlessly to the chambers environment.

I'd be happy to discuss Henry's application further if it would be of assistance. I can be reached at the number or email below. All the best to you and your clerks and staff.

/s/ Cate Stetson
Catherine E. Stetson

Partner
cate.stetson@hoganlovells.com
D 202 637-5491

Hogan Lovells US LLP is a limited liability partnership registered in the District of Columbia. "Hogan Lovells" is an international legal practice that includes Hogan Lovells US LLP and Hogan Lovells International LLP, with offices in: Alicante Amsterdam Baltimore Beijing Birmingham Boston Brussels Colorado Springs Denver Dubai Dusseldorf Frankfurt Hamburg Hangzhou Ho Chi Minh City Hong Kong Houston Johannesburg London Los Angeles Luxembourg Madrid Mexico City Miami Milan Minneapolis Monterrey Moscow Munich New York Northern Virginia Paris Perth Philadelphia Rio De Janeiro Rome San Francisco São Paulo Shanghai Silicon Valley Singapore Sydney Tokyo Warsaw Washington DC. Associated offices: Budapest Jakarta Shanghai FTZ Ulaanbaatar Zagreb. Business Service Centers: Johannesburg Louisville. For more information see www.hoganlovells.com.



Kate Boudouris
Research, Instruction & Outreach Librarian

June 9, 2023

The Honorable Jamar K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510

Dear Judge Walker:

I am writing on behalf of Henry Adams, who has applied for a clerkship in your chambers. Henry was my student in Advanced Legal Research in the spring of 2023. I believe that Henry will be a fantastic clerk, and he has my enthusiastic recommendation.

Henry demonstrated excellent research, writing, and analytical skills in my class. Over the course of the semester, he completed a number of exercises designed to simulate real-world research problems, including four memos based on sources such as case law, statutes, and legislative history. Without exception, Henry's memos presented thorough research and cogent legal analysis. His writing was clear and well organized, reflecting great attention to detail. I was especially impressed by a memo in which Henry evaluated a novel theory of public nuisance liability. In a superb analysis of the potential claim, he synthesized relevant case law, anticipated likely defense arguments, and drew perceptive parallels between past cases and the proposed litigation. Henry's stand-out performance on a challenging assignment showed that he possesses the abilities and intellect necessary to succeed in a federal clerkship.

Henry also excelled at translating his research into sound legal advice. His memos displayed a keen awareness of project goals and practical considerations, which were reflected not only in his ultimate conclusions, but also in the legal sources and textual passages that he chose to highlight. When asked to evaluate possible courses of action—such as strategies for litigation or regulatory compliance—he demonstrated both intellectual rigor and good judgment, carefully weighing client interests. Henry's strategic acumen and common sense will serve him well throughout his career.

On a personal level, I have been impressed by Henry's character, communication skills, and intellectual curiosity. Many of our class sessions involved working in groups, and Henry was an exemplary group member, actively participating while encouraging his classmates to share their ideas. In class, Henry made insightful connections between our skills-based lessons and the substantive content of his other courses—explaining, for example, how our work with statutory

codes related to the interpretive issues covered in his legislation class. I always enjoyed Henry's visits to my office hours, where I found him to be bright, inquisitive, and personable.

I am confident that Henry's research skills, analytical abilities, and personal character will make him an outstanding clerk. If you have any questions, please do not hesitate to contact me.

Sincerely,



Kate Boudouris
Research, Instruction & Outreach Librarian

June 08, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am very pleased to recommend Henry Adams for a clerkship in your chambers. Henry was my student in Federal Courts in Fall 2022, and I believe he will make an excellent law clerk.

Henry came to law school after spending three years as a high school Spanish teacher in Detroit, and after working as a legal assistant in the housing/eviction defense practice of a legal aid organization in Detroit. I spoke with Henry about his reasons for coming to law school. He explained that his experiences as a teacher in Detroit had been highly significant; he learned a great deal about the circumstances of his students' lives and became curious about the legal decisions that affected his students' communities. In conversation, I have found Henry to be a very intelligent and thoughtful person capable of reflecting on big-picture themes without losing sight of doctrinal details.

Henry's work experience before law school has also contributed to his maturity and work ethic. As a teacher, he was charged in his first year with developing the curriculum and materials for his Spanish course on his own, with five classes each containing up to 35 students. He also served as a mentor and advisor to 18 male students. These activities required him to form strong relationships with students, parents, and colleagues, and to exercise judgment and discretion.

In my Federal Courts class, Henry made terrific contributions. His responses to cold calls were accurate and careful. It was clear that Henry had prepared the material thoroughly. Henry speaks in a concise way that provides evidence of a well-organized mind. When Henry asked questions in class, those questions were on point and helpful to his classmates. At one point, Henry volunteered the correct answer to a tricky hypothetical that required students to think quickly during class. Henry's exam in Federal Courts was clearly written, with admirable brevity. The exam revealed substantial preparation, providing evidence of Henry's strong commitment to his responsibilities. Henry's experience in Federal Courts will be especially helpful from the clerkship perspective, as we covered many issues that are directly relevant to work in the federal courts. These issues include standing, the interplay between federal and state litigation, civil rights lawsuits, and habeas corpus.

Henry has challenged himself outside the classroom. In particular, he is the Co-President of UVA Law's Extramural Moot Court, after having served as Vice President, a coach, and a competitor. He served as a coach for the team that UVA Law sent to the Hunton Andrews Kurth National Moot Court Championship as well as the team that UVA Law sent to the NYU National Immigration Law Competition. His activities in Moot Court have provided him with valuable opportunities to engage in public speaking, research, and writing. He also has experience multitasking and organizing events with numerous moving parts—through Moot Court, his work with the Student Bar Association, and his work as President of the Interfraternity Council at the University of Michigan as an undergraduate. In addition, Henry has applied legal research and writing skills through his role on the Executive Board of the Virginia Journal of International Law, where he leads the notes team as Notes Development Editor.

Henry has taken the opportunity in law school to deepen his interest in public service. During law school, he completed over 90 pro bono hours at local Charlottesville organizations, as well as for organizations in Detroit and Chicago (remotely). During the summer after his first year of law school, Henry was a legal intern at the Charlottesville-Albemarle Public Defender Office. These experiences enabled Henry to see the impact of the law on the communities surrounding the law school.

From a personal perspective, Henry would be a welcome addition to a judge's chambers. He is friendly, unassuming, respectful, eager to help, and focused on learning from his mentors and his classmates. Henry would be a team player within the close-knit environment of chambers.

Henry intends to join a litigation group at a law firm immediately after clerking. Later, he wants to become involved with criminal justice reform and other legal reforms directed at the burdens of poverty. In my view, Henry will make superb contributions to the legal field.

In sum, I recommend Henry highly for a clerkship in your chambers. Please do not hesitate to contact me if you would like any additional information.

Sincerely,

Rachel Bayefsky

Associate Professor of Law
University of Virginia School of Law
rbayefsky@law.virginia.edu

Rachel Bayefsky - rbayefsky@law.virginia.edu - (434) 924-5716

Henry L. Adams

717 Madison Ave., Charlottesville, VA 22903 • (602) 403-9301 • hla8nr@virginia.edu

The following writing sample is an excerpt from my final paper for my “Racial Justice and Law” course with Professor Kim Forde-Mazrui. The excerpted portion analyzes potential equal protection arguments surrounding Virginia’s felon disenfranchisement policy. The introduction also references jury exclusion, which I analyze later in the paper but have not included in this excerpt. During the semester, I discussed the scope of the topic with Professor Forde-Mazrui. I also gave a presentation of a work-in-progress to our class on my tentative arguments where I received questions and comments. However, the paper itself has not been edited by anyone other than me, nor have I received and incorporated any substantive feedback.

Racial Justice and Automatic Rights Restoration for Felons in Virginia

I. Introduction

In the United States, two of the most fundamental tenets of civic participation are voting in democratic elections and service on a jury.¹ Yet, as of 2022, over 4.6 million Americans of voting age do not have the right to vote due to a felony conviction,² and as of 2021, over 20 million were barred from serving on a jury.³ While states vary in their policies for restoring the franchise and jury rights,⁴ Virginia is one of a small handful of states to permanently bar its citizens who have been convicted of a felony from both the jury box and the ballot box unless their rights have been restored by the Governor (“or other appropriate authority”),⁵ and it is now effectively the only state in the nation to permanently disenfranchise all people with a felony conviction unless the Governor restores their rights.⁶

Over the past decade, Virginia governors on both sides of the aisle have exercised their rights restoration power with purpose and efficiency, restoring the rights of over 300,000 former felons in the state across three administrations.⁷ After taking office in January of 2022, Governor Glenn Youngkin initially appeared prepared to keep pace with the work of his predecessors,

¹ Andrew Guthrie Ferguson, *The Jury as Constitutional Identity*, 47 U.C.D. L. REV. 1105 (2014).

² Christopher Uggen, Ryan Larson, Sarah Shannon & Robert Stewart, *Locked Out 2022: Estimates of People Denied Voting Rights*, THE SENTENCING PROJECT 2 (2022), <https://www.sentencingproject.org/reports/locked-out-2022-estimates-of-people-denied-voting-rights/>.

³ Ginger Jackson-Gleich, *Rigging the jury: How each state reduces jury diversity by excluding people with criminal records*, PRISON POL’Y INITIATIVE (Feb. 18, 2021), <https://www.prisonpolicy.org/reports/juryexclusion.html>.

⁴ *Id.*; Uggen et al., *supra* note 2.

⁵ VA. CONST. art. II, § 1; VA. CODE § 8.01-338; Uggen et al., *supra* note 2; Jackson-Gleich, *supra* note 3.

⁶ *Voting Rights Restoration Efforts in Virginia*, BRENNAN CTR. FOR JUST. (Apr. 3, 2023) <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-virginia>. Note, however, that Kentucky has a similar policy, but their Governor Andy Beshear issued an executive order providing for broad-sweeping rights restoration. *See Voting Rights Restoration Efforts in Kentucky*, BRENNAN CTR. FOR JUST. (Aug. 5, 2020), <https://www.brennancenter.org/our-work/research-reports/voting-rights-restoration-efforts-kentucky>.

⁷ Ben Paviour, *Gov. Youngkin slows voting rights restorations in Virginia, bucking a trend*, NATIONAL PUBLIC RADIO (Apr. 13, 2023, 8:16 PM), <https://www.npr.org/2023/04/13/1169550479/youngkin-felon-voting-rights-virginia>.

restoring the rights of over 3,000 in his first five months in office.⁸ However, in the second half of the year, the Governor slowed his pace dramatically, restoring rights to only another 800 individuals by October of 2022.⁹ The governor's office has taken the position that they believe the Virginia Constitution requires that each case be reviewed individually, but the criteria which Gov. Youngkin intends to rely on when making these individual decisions remains relatively unclear.¹⁰ Secretary for the Commonwealth Kay Coles James has stated in a letter that when evaluating applications for rights restoration her office will be "practicing grace for those who need it and ensuring public safety for our communities and families."¹¹ This change in rights restoration policy under the Youngkin administration highlights the enormous discretion that the Virginia Constitution grants to the Governor in the decision of whether to restore felons' rights and the potential it has for abuse through the institution of an arbitrary and opaque decision-making process.¹²

The Governor's pivot has brought Virginia's rights restoration policy under public scrutiny once again,¹³ and raises questions about whether it can be justified. Felon disenfranchisement and jury exclusion disproportionately impacts Black Virginians, who are significantly more likely to be incarcerated than any other racial demographic in the state.¹⁴ It is not difficult to imagine how a policy that allows governors to restore the right to vote on an ad

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ See e.g., *id.*; Michael Wines, *Virginia Rolls Back Voting Rights for Ex-Felons, Bucking Shaky Bipartisan Trend*, N.Y. TIMES (Apr. 6, 2023) <https://www.nytimes.com/2023/04/06/us/virginia-youngkin-voting-former-felons.html>; Alex Burness, "Back to 1902": Virginia Governor Revives Lifetime Ban on Voting, BOLTS (Mar. 28, 2023) <https://boltsmag.org/virginia-governor-youngkin-rights-restoration/>; Jarvis DeBerry, *Glenn Youngkin dials Virginia's voting rights policy back to Jim Crow*, MSNBC (Apr. 2, 2023, 6:00 AM) <https://www.msnbc.com/opinion/msnbc-opinion/glenn-youngkin-virginia-voting-rights-rcna77100>.

¹⁴ *Virginia Profile*, PRISON POL'Y INITIATIVE (last visited May 11, 2023), <https://www.prisonpolicy.org/profiles/VA.html>.

hoc basis could be used for political or other invidious purposes under the veil of a more neutral criteria. Furthermore, to the extent that politicians may see racial demographics as indicative of political preferences, discretionary rights restoration threatens to exacerbate the racial disparity in who may vote and serve on a jury even more than the criminal legal system already does, further diminishing the political power of Black Virginians.

There are several recent and ongoing efforts to reform the rights restoration process in Virginia, including an attempt by the legislature to amend the Constitution so that it would provide for automatic rights restoration,¹⁵ and a lawsuit filed in April of 2023 challenging the Governor's restoration practices on First Amendment Grounds.¹⁶ Past lawsuits have also challenged the disenfranchisement provision on equal protection grounds, among other claims.¹⁷

This paper will examine felon disenfranchisement and jury exclusion in Virginia through a racial justice lens, argue that automatic rights restoration for felons is an imperative for racial justice, and advance proposals for challenging the disenfranchisement and juror exclusion provisions as they currently stand. Although much of the litigation and reform effort has focused on voting rights, the right to vote and the ability to serve on a jury have strong historical links,¹⁸ and have historically been grouped for purposes of rights restoration in Virginia.¹⁹ In Part II of this paper I will seek to provide the necessary background concerning the challenged provisions,

¹⁵ See Dean Mirshahi, *Virginia Republicans block proposal to make felon voting rights restoration automatic*, ABC NEWS WRIC (Feb. 8, 2022, 8:46 PM) <https://www.wric.com/news/politics/capitol-connection/virginia-republicans-block-proposal-to-make-felon-voting-rights-restoration-automatic/>.

¹⁶ See The Associated Press, *Youngkin's limits on restoration of voting rights face legal challenges*, VPM (Apr. 7, 2023, 11:57 AM) <https://www.vpm.org/2023-04-07/youngkins-felon-voting-rights-face-legal-challenges>.

¹⁷ See e.g., *Perry v. Beamer*, 99 F.3d 1130 (4th Cir. 1996) (per curiam) (unpublished table decision); *Howard v. Gilmore*, 205 F.3d 1333 (4th Cir. 2000) (per curiam) (unpublished table decision); *El-Amin v. McDonnell*, No. 3:12-CV-00538-JAG, 2013 WL 1193357 (E.D. Va. Mar. 22, 2013).

¹⁸ See Vikram David Amar, *Jury Service As Political Participation Akin to Voting*, 80 CORNELL L. REV. 203, 206, 217-20 (1995).

¹⁹ See Tom Jackman, *Va. prosecutors seek names of restored felons who may now be jurors, but McAuliffe refuses*, WASH. POST (May 28, 2016, 2:20 PM) <https://www.washingtonpost.com/news/true-crime/wp/2016/05/28/va-prosecutors-seek-names-of-restored-felons-who-may-now-be-jurors-but-mcauliffe-refuses/>.

elaborate on the racially disparate effects they have had, and explain why automatic rights restoration is imperative. In Part III I will propose and evaluate a potential constitutional challenge to Virginia’s felon disenfranchisement provision under an equal protection framework. Then in Part IV I will evaluate arguments concerning jury exclusion, suggesting that there may be a basis for a constitutional challenge under a fair cross-section analysis, separate and apart from any challenge to the disenfranchisement provision.

II. Historical Background

Felon disenfranchisement has a long history in Virginia, dating back to at least 1830.²⁰ Even before that, the concept was not a novel one, it has roots in some of the philosophies and traditions that helped form American society.²¹ Concerning disenfranchisement in the pre-Civil War era, some scholars, including Prof. Howard, have suggested it is unlikely that the disenfranchisement policies considered race, as most states did not allow Black people the right to vote regardless of conviction status.²² However, it has also been noted that lurking in the background of the 1830 constitutional revision in Virginia was a recognition by the governor of the difference in crime rates between free Black and white citizens, leading Helen Gibson to conclude that the suffrage provision in that Constitution (providing the vote only to property-owning whites) “rested in part on the assumption that free African Americans were disqualified

²⁰ See VA. CONST. of 1830, Art. III, §14. (prohibiting voting by anyone “convicted of any infamous offence”); Helen A. Gibson, *Felons and the Right to Vote in Virginia: a Historical Overview*, 91 THE VA. NEWS LETTER, Jan. 2015 at 2.

²¹ See A. E. Dick Howard, *Who Belongs: The Constitution of Virginia and the Political Community*, 37 J.L. & POL. 99, 115 (2022) (referencing statements by John Locke, Thomas Paine, and John Jay which suggested a support for the forfeiture of certain rights of civic participation following conviction for a crime (citing JOHN LOCKE, SECOND TREATISE OF GOVERNMENT 11 (C.B. Macpherson ed., 1980); Thomas Paine, *Dissertation on the First Principles of Government*, 3 THE WRITINGS OF THOMAS PAINE 267 (Moncure Daniel Conway ed., 1895); Henfield’s Case, 11 F. Cas. 1099, 1105 (C.C.D. Pa. 1793))).

²² *Id.* at 115-16 quoting JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 53-54 (2006) (“As two authors put it: ‘...Since most free African Americans were already legally disenfranchised, further targeting of the black vote through disenfranchising measures directed at felons would have been largely superfluous.’”).

for the vote because of their proclivity for crime.”²³ Following the Civil War and Reconstruction, the southern states were faced with a new dilemma—the Reconstruction Amendments²⁴ imposed upon them a new requirement, that their Black male residents be permitted to vote, or else the state would face the loss of congressional representation proportional to the population that they disenfranchised.²⁵

Virginia set out to find a way around these strict requirements, wherein they could maintain white hegemony at the ballot box, without sacrificing their political power in Washington.²⁶ At the 1901-1902 Virginia Constitutional Convention, Delegate Carter Glass proclaimed that the suffrage provision in the proposed constitution would accomplish exactly what it had set out to.

‘Discrimination! Why, that is precisely what we propose; that, exactly, is what this Convention was elected for—to discriminate to the very extremity of permissible action under the limitations of the Federal Constitution, with a view to the elimination of every negro voter who can be gotten rid of, legally, without materially impairing the numerical strength of the white electorate. As has been said, we have accomplished our purpose strictly within the limitations of the

²³ Gibson, *supra* note 20, at 2 (citing and quoting PROCEEDINGS AND DEBATES OF THE VIRGINIA STATE CONVENTION, OF 1829-1830, TO WHICH ARE SUBJOINED, THE NEW CONSTITUTION OF VIRGINIA, AND THE VOTES OF THE PEOPLE 905-13 (Richmond: Printed by Samuel Sheperd & Co. for Ritchie & Cook, 1830) (‘...the number of convictions of the free coloured, is about four times greater, according to the numbers, than either the free white, or coloured slave, population.’)).

²⁴ See U.S. CONST. amend. XIII; U.S. CONST. amend. XIV; U.S. CONST. amend. XV.

²⁵ See U.S. CONST. amend. XIV, § 2 (stating “But when the right to vote...is denied to any of the male inhabitants of such State...or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.”).

²⁶ See Howard, *supra* note 21, at 116-119 (describing the various measures taken by the Virginia legislature throughout the 19th Century to disenfranchise Black citizens).

Federal Constitution by legislating against the characteristics of the black race, and not against the "race, color, or previous condition" of the people themselves.’²⁷

The provision that the delegates had drafted would achieve this goal of “legal” discrimination through several means, including economic discrimination, a literacy test,²⁸ and the ban on voting by anyone who was convicted of a felony or a list of several other crimes,²⁹ some selected because they were thought of at the time to be disproportionately associated with Black people, regardless of their severity.³⁰

These provisions were extremely effective at reducing the number of registered Black voters in the state,³¹ and they continued to have their intended effect for the first half of the twentieth century and beyond.³² However, during the Civil Rights era, Congress and the courts began to limit the instruments of voter suppression, ultimately prohibiting both literacy tests and poll taxes.³³ By 1968, the only remaining restriction on the franchise from the 1902 Constitution was the provision concerning felons and those who had committed other listed crimes.³⁴ It is

²⁷ *Id.* at 119 (quoting REPORT OF THE PROCEEDINGS AND DEBATES OF THE CONSTITUTIONAL STATE OF VIRGINIA, HELD IN THE CITY OF RICHMOND JUNE 12, 1901 TO JUNE 26 1902, at 3076–77).

²⁸ The provision in the 1902 Constitution which functioned as a literacy test was called the “Understanding Clause.” See Daniel R. Ortiz, *Voting Rights and the 1971 Virginia Constitution*, 37 J.L. & POL. 155, 158–59 (2022) (citing VA. CONST. of 1902, art. II, § 19 and explaining that the ‘Understanding Clause’ was designed for flexible use by officials to disenfranchise Black voters while allowing white voters to pass.).

²⁹ See *id.* (detailing the provisions of the 1902 Constitution meant to disenfranchise black voters).

³⁰ *Id.* at 156, n.6–8 (citing VA. CONST. of 1902, art. II, § 23 for the list of crimes and quoting JOHN DINAN, THE VIRGINIA STATE CONSTITUTION 89, n.46 (2d ed., Oxford Univ. Press 2014) (collecting authorities) for the notion that ‘The scholarly consensus is that [the] 1876 amendment to the Virginia Constitution, which added ‘petit larceny’ to the list of disqualifying offenses. . . was clearly designed to target African American voters.’). See also Howard, *supra* note 21, at 118 (quoting RALPH MCDANEL, THE VIRGINIA CONSTITUTIONAL CONVENTION OF 1901–1902, at 6 (1928) for the same notion, “that that the amendment was ‘aimed directly at the negro’ because it was assumed that petit larceny ‘was a common offense among them.’”).

³¹ Ortiz, *supra* note 28, at 159 (summarizing the dramatic drop in registered Black voters across Virginia.).

³² See Howard, *supra* note 21, at 120 (highlighting the extremely low Black voting rates in the early 1900s.). See also Uggen et al., *supra* note 2, at 2 (noting that as of 2022 more than one in ten African American adults are disenfranchised in Virginia.).

³³ See *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966) (ruling the poll tax was unconstitutional); Ortiz, *supra* note 28, at 175 (explaining how the Voting Rights Act of 1965 spelled the end of Virginia’s literacy test.).

³⁴ Ortiz, *supra* note 28, at 175–76.

against this backdrop that the Commission on Constitutional Revision gathered in Richmond to design what would ultimately become the Virginia Constitution of 1971, a constitution for a new era.³⁵ In this new constitution, the drafters complied with the new federal limitations, eliminating the provisions that had been deemed illegal, but retaining the felon disenfranchisement provision with only slight revision.³⁶ While many of the changes enacted in the 1971 Constitution were progressive for their time,³⁷ as Prof. Ortiz notes, in context of suffrage, the developments of the preceding decades had forced the Commonwealth's hand.³⁸

The new disenfranchisement provision eliminated the previous list of crimes, but retained the automatic and permanent loss of rights, unless restored by the Governor "or other appropriate authority."³⁹ The provision in the 1971 Constitution remains to this day, and it is the reason for the current disenfranchisement of hundreds of thousands of Virginians, including as of 2016, one in every five voting-age Black residents.⁴⁰ Although the aggressive rights restoration policies of the recent governors has reduced this number, as of 2022 the percentage of disenfranchised Black voters remained over 10 percent,⁴¹ and that number threatens to increase once again with Gov. Youngkin's change in restoration policy.

Because of the vast racial disparities that exist in enforcement of the criminal law,⁴² felon disenfranchisement has devastating effects for the political power of Black Americans. At the

³⁵ See Howard, *supra* note 21, at 102 (discussing the convening of the Commission on Constitutional Revision).

³⁶ *Id.* at 121.

³⁷ For example, enshrining a right to education. VA. CONST. art. I, § 15; VA. CONST. art. VIII, § 1.

³⁸ Ortiz, *supra* note 28, at 156-57 (stating that "The 1971 Constitution largely omitted any mention of voting rights (or, more accurately, the suppression of them) not because Virginia had changed heart, but because the federal government, through the Supreme Court and Congress, had taken away its toolbox.").

³⁹ See VA. CONST. art. II, § 1; Howard, *supra* note 21, at 102 (quoting VA. COMM'N ON CONSTITUTIONAL REVISION, THE CONSTITUTION OF VIRGINIA: REPORT OF THE COMMISSION ON CONSTITUTIONAL REVISION TO HIS EXCELLENCY, MILLS E. GODWIN, JR. GOVERNOR OF VIRGINIA, THE GENERAL ASSEMBLY OF VIRGINIA, AND THE PEOPLE OF VIRGINIA 106 (Jan. 1, 1969)).

⁴⁰ Christopher Uggen, Ryan Larson & Sarah Shannon, *6 Million Lost Voters: State-Level Estimates of Felony Disenfranchisement, 2016*, THE SENTENCING PROJECT 3 (2016).

⁴¹ Uggen et al., *supra* note 2, at 2.

⁴² See *Virginia Profile*, *supra* note 14 (providing statistics on the racial disparities in incarceration rates in Virginia).

polls, to the extent that Black Virginians have common political goals, a reduction to their proportional vote reduces the incentives for politicians to service the political goals that they advocate for. In the courthouse, Black Virginians are underrepresented in the initial jury pools,⁴³ leading to a greater likelihood that they will ultimately form a smaller percentage of the petit jury in any given case.⁴⁴ This underrepresentation means less Black people serving on juries in Virginia, a scenario which has been shown to be less favorable to defendants,⁴⁵ and a cyclical effect wherein more felons are produced, then later excluded from the juries where they could be a mitigating force.

In recent years, along with a shift in political attitudes, many states have recognized these racial justice implications of felon disenfranchisement and made amendments to their own systems to remedy it.⁴⁶ Virginia had been lauded for its recent governors' policies, with many believing it had turned the corner on its racist past.⁴⁷ However, Gov. Youngkin's policy shift has revealed just how fragile that change was, and why a more permanent remedy is needed.

⁴³ Amanda L. Kutz, *A Jury of One's Peers: Virginia's Restoration of Rights Process and Its Disproportionate Effect on the African American Community*, 46 WM. & MARY L. REV. 2109, 2110 (2005) (stating that (as of the time of the note's publication) "One in four African American males in Virginia is a convicted felon, without the right to serve on a jury. This demonstrates that the exclusion of felons...prevents a significant number of African American males in Virginia from representing a fair cross-section of their community in the jury pool."). Note, however, that this may be true on a statewide basis, but not necessarily in every jurisdiction. See *infra* Part IV for a discussion of the implications of this.

⁴⁴ See Thomas Ward Frampton, *What Justice Thomas Gets Right about Batson*, 72 STAN. L. REV. ONLINE 1, 5 n.25 (2019-2020) (providing an example of this phenomenon, "Consider, for example, a pool of 36 qualified jurors, 67% of whom (24) are white and 33% of whom (12) are nonwhite. If both the defendant and prosecutors have 12 peremptory strikes...the State can ensure an all-white jury in every case.").

⁴⁵ *Id.* at 9 (citing Kim Taylor-Thompson, *Empty Votes in Jury Deliberations*, 113 HARV. L. REV. 1261, 1298 (2000) for a statistical analysis demonstrating that Black jurors were relatively more likely to vote to acquit than white jurors in a group of Louisiana cases.).

⁴⁶ See Zach Montellaro, *States moving fast after Congress failed to expand felon voting rights*, POLITICO (Feb. 2, 2022, 4:30 AM) <https://www.politico.com/news/2022/02/02/felon-voting-rights-states-00004372> (noting that "The number of states automatically restoring voting rights has increased by 50 percent since after the 2018 election, with seven states passing laws or ballot initiatives that automatically restored a person's rights once they were released, according to the NCSL.").

⁴⁷ See Sheryl Gay Stolberg & Erik Eckholm, *Virginia Governor Restores Voting Rights to Felons*, N.Y. TIMES (Apr. 22, 2016), <https://www.nytimes.com/2016/04/23/us/governor-terry-mcauliffe-virginia-voting-rights-convicted-felons.html>.

Automatic rights restoration for felons upon release from prison would best serve the interests of racial justice because it is least susceptible to legislative attack,⁴⁸ and it would begin to repair the harm that has been done immediately. With the future of any constitutional amendment being so uncertain, advocates for rights restoration must look to the courts for relief. In the following two sections I will outline two potential avenues for challenging the constitutionality of Virginia's felon disenfranchisement and felon jury exclusion provisions.

III. Proposal for Restoring the Right to Vote

Equal Protection Challenges to Constitutional Felon Disenfranchisement

In considering an equal protection challenge to felon disenfranchisement in 1974, the Supreme Court held in *Richardson v. Ramirez* that the 14th Amendment to the United States Constitution provided an “affirmative sanction” for felon disenfranchisement.⁴⁹ The Court relied upon the language in the amendment stating that the State’s proportional representation in Congress would be reduced by the amount of otherwise eligible voting age males that were denied the franchise “except for participation in rebellion or other crime”⁵⁰ to conclude that the drafters of the amendment had provided an explicit carveout for state felon disenfranchisement.⁵¹ A little over a decade later, however, relying on the *Arlington Heights*⁵² framework the court would go on to hold in *Hunter v. Underwood* that such provisions disenfranchising felons could

⁴⁸ See Sam Levine, *How Republicans gutted the biggest voting rights victory in recent history*, THE GUARDIAN (Aug. 6, 2020, 6:00 AM) <https://www.theguardian.com/us-news/2020/aug/06/republicans-florida-amendment-4-voting-rights> (discussing the Florida legislature’s move to limit the effects of a constitutional amendment providing for rights restoration “upon completion of all terms of sentence.” FLA. CONST. art. VI, § 4.)

⁴⁹ *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974).

⁵⁰ U.S. CONST. amend. XIV, § 2.

⁵¹ *Richardson*, 418 U.S. at 44-46.

⁵² See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265-66 (1977) (providing a test for equal protection violations that requires proof of disproportionate impact and discriminatory purpose); see also *Washington v. Davis*, 426 U.S. 229, 241(1976).

still constitute equal protection violations if they were “motivated by a desire to discriminate against blacks on account of race” and “continue[d] to this day to have that effect.”⁵³

Since *Hunter*, there have been several plaintiffs that have used the decision to lodge attacks on felon disenfranchisement provisions in several other states, alleging that the provisions had been adopted with racially discriminatory purpose—however, in each of these cases, the court has held that the provision was saved by a subsequent amendment or readoption of the provision when the legislature was no longer motivated by the requisite discriminatory intent.⁵⁴ This includes a case in Alabama,⁵⁵ the state in which the court initially struck down the provision in *Hunter* itself.⁵⁶ There have been only two cases in federal court challenging the Virginia provision on equal protection grounds relating to race, neither of which have been successful.⁵⁷

With this history in mind, it would seem unlikely that an equal protection challenge to the Virginia Constitution’s disenfranchisement provision has a very good chance of success. However, there are two theories which have yet to be fully tested in Virginia under which I will argue the Virginia provision could and should be invalidated.

⁵³ *Hunter v. Underwood*, 471 U.S. 222, 233 (1985).

⁵⁴ See, e.g., *Cotton v. Fordice*, 157 F.3d 388 (5th Cir. 1998); *Johnson v. Governor of State of Fla.*, 405 F.3d 1214 (11th Cir. 2005); *Hayden v. Paterson*, 594 F.3d 150 (2d Cir. 2010); *Thompson v. Alabama*, 65 F.4th 1288 (11th Cir. 2023).

⁵⁵ See *Thompson*, 65 F.4th at 1309.

⁵⁶ See *Hunter*, 471 U.S. at 223.

⁵⁷ See *Howard v. Gilmore*, 205 F.3d 1333 at *1 (4th Cir. 2000) (per curiam) (unpublished table decision) (ruling against the plaintiff on the grounds that “The Commonwealth’s decision to disenfranchise felons pre-dates the adoption of both constitutional amendments as well as the extension of the franchise to African-Americans”); *El-Amin v. McDonnell*, No. 3:12-CV-00538-JAG, 2013 WL 1193357 (E.D. Va. Mar. 22, 2013). But see *Ortiz*, *supra* note 28, at 180 (pointing out that the *Howard* decision “fails to acknowledge that the 1902 Virginia Constitution gerrymandered its definition of which crimes one could be disenfranchised for committing in a way that intentionally targeted race” and the *El-Amin* case was mooted by the Governor’s restoration of the plaintiff’s rights before it could be heard on the merits.).

Harness v. Watson and Discriminatory Taint

Plaintiffs in the case of *Harness v. Watson* have recently filed a petition for certiorari in the Supreme Court, alleging that Mississippi’s felon disenfranchisement provision violates the equal protection clause under *Hunter* because the provision was not actually re-enacted without discriminatory intent.⁵⁸ According to the plaintiffs, Mississippi’s constitutional provision⁵⁹ for felon disenfranchisement was not actually reenacted when it was amended, because the Mississippi electorate never actually had the opportunity to accept or reject the provision in its entirety.⁶⁰ Rather, the only choice put to the people was whether to accept or reject the proposed revisions, which, in the plaintiff’s view, was not sufficient to ‘alter the intent with which the [original] article, including the parts that remained, had been adopted.’⁶¹

The line of argument that the plaintiff alleges in this case is one of “discriminatory taint”, a topic that Prof. Kerrell Murray has highlighted in a recent article and proposed a novel framework for assessing.⁶² In his article, Prof. Murray describes a problem that courts have faced with increasing frequency in recent years—many laws bear a “discriminatory taint,” which he defines as “an objectively ascertainable relationship between an earlier [discriminatory] policy and a later, similar policy.”⁶³ Prof. Murray proposes a method for courts to address the constitutionality of such laws in a way that constitutes a “genuine purging” of the taint, rather than just a “laundering.”⁶⁴ He proposes that

⁵⁸ Petition for Writ of Certiorari at 5, *Harness v. Watson*, 47 F.4th 296 (5th Cir. 2022), *petition for cert. filed*, (U.S. Oct. 28, 2022) (No. 22-412).

⁵⁹ MISS. CONST. art. XII, § 241.

⁶⁰ Petition for Writ of Certiorari at 5, *Harness*, 47 F.4th 296 (No. 22-412).

⁶¹ *Id.* (quoting *Abbott v. Perez*, 138 S. Ct. 2305 (2018)). *See also Harness*, 47 F.4th at 316 (Elrod, Circuit Judge, dissenting) (stating that “Mississippians were never given the option to remove the racially tainted list [of crimes]” so “the State is stuck with its discriminatory intent.”).

⁶² *See* W. Kerrel Murray, *Discriminatory Taint*, 135 HARV. L. REV. 1190 (2022).

⁶³ *Id.* at 1192.

⁶⁴ *Id.* at 1197.

courts first ask whether the state can show that the contemporary policy has eliminated any meaningful disparate impact. Second — if the state cannot so show — it must make a heightened showing of why it cannot eliminate the disparate impact and why the legitimate need for this means of pursuing a nondiscriminatory government interest outweighs the harm of shielding the disparate impact of a tainted rule.⁶⁵

Such an inquiry would constitute a significant raising of the standard under which courts have evaluated equal protection claims in the felon disenfranchisement context.⁶⁶ Instead of placing the burden on the plaintiff to produce all the evidence regarding disparate impact and discriminatory purpose, the burden is on the state to begin with.⁶⁷ Furthermore, while under the *Hunter* framework the state can save the law by merely demonstrating that the law would have been enacted even without the racially discriminatory motivating factor,⁶⁸ under Prof. Murray’s framework, the state would have the heightened burden of persuasion to prove that the “legitimate need” for the policy outweighs the harm produced by its discriminatory taint.⁶⁹ This approach is preferable for many reasons, but crucially, it eliminates the near insurmountable burden that *Hunter* and its progeny have placed on plaintiffs to prove discriminatory purpose at the time of reenactment.⁷⁰ As it stands, the *Hunter* framework allows for any state legislature seeking to preserve a racially tainted felon disenfranchisement law through minimal modification, so long as they make no comments suggesting that they intend to carry forward

⁶⁵ *Id.*

⁶⁶ See *Hunter v. Underwood*, 471 U.S. 222, 228 (1985) (placing the burden on the plaintiff to show racial discriminatory intent was “a ‘substantial’ or ‘motivating’ factor behind enactment of the law” before shifting the burden to the defendant.).

⁶⁷ Murray, *supra* note 62, at 1197.

⁶⁸ *Hunter*, 471 U.S. at 228.

⁶⁹ Murray, *supra* note 62, at 1197.

⁷⁰ *Id.*

that purpose.⁷¹ Regarding those cases which have evaluated felon disenfranchisement laws across various states, Prof. Murray points out that the courts' reasoning required only a minimal showing of change in language between the enactment of the indisputably racially motivated policy at time one and its reenactment down the line at time two in order to uphold their constitutionality.⁷²

How would Virginia's provision fare if we applied the framework from *Harness*, or took seriously the "possible continuity between old and new laws" as Prof. Murray suggests we should?⁷³ Like the Mississippi provision in question in *Harness*, Virginia voters never had the opportunity to choose between "reenacting" the felony disenfranchisement provision or not reenacting it, their only choice was whether or not to accept the new constitution in its entirety as the commission had designed it.⁷⁴ Furthermore, as Prof. Ortiz notes, although there is little commentary concerning the reasons behind the decision to retain but slightly change the felony disenfranchisement provision,⁷⁵ there is plenty of evidence regarding the historical background surrounding the decision that might shed light on the legislature's intentions.⁷⁶ Virginia had fought vigorously against integration and other civil rights initiatives,⁷⁷ so it seems odd that courts would impute to them a race-neutral reason for the reenactment of the provision just a few years later.

Even if the background surrounding the enactment of the law appears an unconvincing reason to find that there was discriminatory intent lingering behind the 1971 Constitution, should

⁷¹ See *supra* note 54, listing cases that have survived *Hunter* due to reenactment.

⁷² Murray, *supra* note 62, at 1206-07.

⁷³ *Id.* at 1207.

⁷⁴ Ortiz, *supra* note 28, at 178 ("The voters ratified the constitution as proposed by the legislature."). Note, however, that the voters technically could have rejected the changes, even though it would have meant rejecting the constitution entirely.

⁷⁵ *Id.* at 177.

⁷⁶ *Id.* at 156 (discussing Virginia's role in opposing school desegregation and the Voting Rights Act of 1965).

⁷⁷ *Id.*

it matter? Following Prof. Murray's framework, it's clear that the racially disparate impact of felon disenfranchisement has not been cured by the changes to the provision made by the 1971 Constitution.⁷⁸ Could Virginia meet the "heightened showing" of why the felon disenfranchisement provision is necessary to achieving a legitimate governmental aim, such that it outweighs the disparate impact?⁷⁹

One possible response from the state is that felon disenfranchisement is a mechanism that the Constitution itself appears to endorse, as the court pointed out in *Richardson*.⁸⁰ Additionally, they could argue that there is in fact no alternative race-neutral means of achieving the state's goal of excluding those who have broken the social contract,⁸¹ and that felon disenfranchisement is something that, while reflective of disparities in society, is itself not productive of them. Further, some may reject the premise that felon disenfranchisement in isolation ever had a sufficient racially discriminatory purpose in Virginia to render it unconstitutional. As Prof. Howard points out, Virginia had limited the voting rights of those who had committed crimes long before they ever considered the possibility that Black people would be eligible voters.⁸²

However, I would argue that each of these responses is sufficiently flawed such that they would constitute inadequate justifications for retaining the provision. For one, if a provision is enacted against a societal background that ensures it will have discriminatory results, then there is no effective way of separating it from that context such that it would be a truly neutral law.⁸³ Additionally, in the context of felon disenfranchisement, it is the state's policies which have

⁷⁸ See Uggen et al., *supra* note 2, at 2.

⁷⁹ Murray, *supra* note 62, at 1197.

⁸⁰ *Richardson v. Ramirez*, 418 U.S. 24, 54 (1974).

⁸¹ See Howard, *supra* note 21, at 115 (referencing the social contract justification for disenfranchisement.).

⁸² See Howard, *supra* note 21, at 115-16.

⁸³ See Brian C. Kalt, *The Exclusion of Felons from Jury Service*, 53 AM. U. L. REV. 65, 92. (2003) (advancing the possibility in the felon jury exclusion context that an equal protection claim could be brought on the grounds that "the enforcement of the criminal law is substantially racially biased today, and that any contemporaneous law maintaining or expanding felon exclusion is tainted with that bias.").

created the racial disparity in criminal legal enforcement to begin with.⁸⁴ If state actors create a racial disparity, then legislate in a facially-neutral manner such that the policy the state has designed creates significantly racially disparate consequences, it is difficult to see how they could be said to be acting in the absence of an intent to racially discriminate, or at least an awareness that they were doing so.⁸⁵ Any jurisprudence that would hold otherwise is effectively a free pass for states to enact such laws then throw their hands up and claim inadvertence when they face scrutiny for them.

Unfortunately, to the extent that this discriminatory taint argument has been attempted so far, it has been unsuccessful.⁸⁶ However, there has been examples of strong support from the dissenters for an argument like the one advanced by the petitioners in *Harness*.⁸⁷ Such opinions suggest a growing discontentment with the *Hunter* framework, and the potential for it to be replaced with something like Prof. Murray’s “discriminatory taint” analysis.⁸⁸ Whether a case is likely to have success in Virginia under the *Harness* or Murray “discriminatory taint” arguments will depend on a number of factors, including the result of *Harness* if the Supreme Court were to grant their petition for certiorari—but there is certainly a strong case to be made that the discriminatory taint of its origins is still attached to the felon disenfranchisement provision in operation today.

⁸⁴ See, e.g., Nkechi Taifa, *Race, Mass Incarceration, and the Disastrous War on Drugs*, BRENNAN CTR. FOR JUST. (May 10, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/race-mass-incarceration-and-disastrous-war-drugs>.

⁸⁵ See Kalt, *supra* note 83, at 91-92.

⁸⁶ See, e.g., *Thompson v. Alabama*, 65 F.4th 1288 (11th Cir. 2023).

⁸⁷ See *id.*, (Rosenbaum, Circuit Judge, Concurring in Part and Dissenting in Part) (stating that “it’s easier for a state to reenact a law with racist origins than it is for a state to enact a law without racist origins.”).

⁸⁸ Murray, *supra* note 62.

Applicant Details

First Name **Laith**
 Middle Initial **M.**
 Last Name **Adawiya**
 Citizenship Status **U. S. Citizen**
 Email Address lmadawiya@ucdavis.edu

Address

Address
Street
8 El Vado Drive
City
Rancho Santa Margarita
State/Territory
California
Zip
92688
Country
United States

Contact Phone Number **(949)-973-8101**

Applicant Education

BA/BS From **University of California-Los Angeles**
 Date of BA/BS **June 2021**
 JD/LLB From **University of California, Davis School of Law (King Hall)**
http://www.nalplawschoolsonline.org/ndlsdir_search_results.asp?lscd=90502&yr=2011
 Date of JD/LLB **May 11, 2024**
 Class Rank **Below 50%**
 Law Review/Journal **Yes**
 Journal(s) **Journal of International Law and Policy
 Business Law Journal**
 Moot Court Experience **Yes**
 Moot Court Name(s) **Neumiller Moot Court Competition
 ABA National Appellate Advocacy Competition
 Appellate Advocacy I & II**

Bar Admission

Prior Judicial Experience

Judicial
Internships/ **Yes**
Externships
Post-graduate
Judicial Law **No**
Clerk

Specialized Work Experience

Recommenders

Tang, Aaron
aatang@ucdavis.edu
Wagner, Ryan
ddawagner@ucdavis.edu
Canzoneri, Michael
macanzoneri@ucdavis.edu
Joseph, Jeannie
jjoseph@occourts.org

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Cover Letter

Laith M. Adawiya

**United States District Court – Eastern District of Virginia
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510**

Dear Judge Walker,

Please find attached my resume, writing sample, transcripts, and letters of recommendation for your review and consideration in connection with your Chamber's 2024 – 2025 Clerkship. I have just completed my second year at the UC Davis School of Law and am on track to graduate in the Spring of 2024. Following my graduation, I hope to fulfill my life-long career goal of working in public service. Towards that end, I believe that this Clerkship opportunity, and the experience it will provide me, will be the perfect first step in achieving that goal.

My passion for public service began in high school, when I came upon a speech given by Senator Robert F. Kennedy in Indianapolis following the assassination of Martin Luther King Jr. I was so struck by the eloquence and passion of his words – a call for peace and understanding between all Americans – that I decided to dedicate my professional life to public service; to pursue a career that, in the spirit of Senator Kennedy, attempts to help the poor and underprivileged. From a young age, my parents instilled in me the importance of integrity, justice, and the impartiality of law in society; and perhaps no institution is more dedicated to these ideals than the Judiciary.

As a District Court, your Chambers are at the forefront of debates regarding national matters, issuing rulings that will affect countless Americans. The areas in which the Eastern District Court of Virginia engages – ranging from civil rights, to immigration, to administrative procedure – interest me tremendously. And as a law student, an aspiring public servant, and much more importantly, a fellow American, I hope to partake in that work; to aid in the process of ensuring that the Judiciary continues to commit itself towards that demanding, yet admirable goal of "Equal Justice Under the Law."

My studies and work experience thus far – outlined on the attached resume - have only served to strengthen my dedication to that cause, and I believe have prepared me well for this Clerkship opportunity. I am confident that you will find me to have a very strong work ethic, and who will support your Chambers reviewing trial records, researching applicable law, and drafting legal memoranda and court opinions among other things.

For those reasons, and more, it would be an honor to be selected for your Chamber's 2024 – 2025 Clerkship, and work alongside you and other dedicated professionals that share my passion for public service.

Please do not hesitate to contact me should you need any additional information. I thank you for your consideration, and look forward to hearing from you.

Sincerely,



Laith M. Adawiya

Email: lmadawiya@ucdavis.edu

Phone Number: (949)-973-8101

Laith M. Adawiya

Phone: (949) 973-8101
Email: lmadawiya@ucdavis.edu

Education

J.D. | Expected Graduation Date: May, 2024
University of California, Davis School of Law, CA 95616

B.A. in Political Science | Graduation Date: June, 2021
University of California, Los Angeles, CA 90095
Focus: American Politics
Minor: History
GPA: 3.918/4.00 – Magna Cum Laude

A.A. in Political Science | Graduation Date: May, 2019
Saddleback College, CA 92692
GPA: 4.00/4.00

Experience

Legal Intern | June 2023 – August 2023
Office of Legislative Counsel, Sacramento, CA 95814

- Provide legal advice to California State legislators regarding constitutional, administrative, and procedural matters
- Assist in the drafting of legislation for the California State Legislature

Superior Court Judicial Extern | June 2022 – August 2022
OC Superior Court, Orange County, CA 92701

- Observed OC Superior Court arraignments, trials, and other proceedings
- Discussed case issues with Judges and other Externs
- Completed legal memorandum as assigned by Judge

Undergraduate Reader | October 2020 – December 2020
University of California, Los Angeles, CA 90095

- Attended "Political Science 145B – Federalism and Separation of Powers" course
- Met with instructor and other readers to go over grading format and course logistics
- Graded student essays and submitted constructive comments

College Extern | June 2020 – September 2020
U.S. Attorney's Office, Los Angeles, CA 90012

- Aided Assistant U.S. Attorneys with projects and casework through research, organization, trial preparation, transcription, and analysis of evidence, requiring security clearance
- Attended various panels hosted by officials from different agencies and branches of government

Student Assistant | September 2019 – March 2020
UCLA School of Law, Los Angeles, CA 90095

- Aided faculty assistants in day-to-day affairs
- Assisted with word-processing, department events, and basic administrative and clerical duties
- Internet research, data entry, running of errands, etc.

Guest Service Representative | June 2017 - September 2019
Courtyard Marriott, Foothill Ranch, CA 92610

- Greeted, registered, and assigned rooms to guests
- Promptly and effectively dealt with guest requests and complaints
- Reconciled cash drawer contents with transactions during shift

Congressional Intern | October 2017 - August 2018
Congresswoman Mimi Walters, Irvine, CA 92612

- Answered phone calls from constituents
- Aided staffers in day-to-day affairs
- Helped prepare various events in California's 45th district (e.g. Congressional Art Competition, Military Academy Showcase)

Languages & Skills

Foreign Language: Arabic
Office Applications: Microsoft Word, PowerPoint, Excel, & Outlook
Research Tools: Internet Explorer, Microsoft Edge, Google Advanced Search
Editing Applications: Adobe Acrobat

Achievements & Activities

Civil Rights Clinic – Fall 2023
UC Davis Law

Moot Court Honors Board – 2023-Present
UC Davis Law

Moot Court Judge Recruitment Chair – 2023-Present
UC Davis Law

ABA National Appellate Advocacy Competition – Spring 2023
UC Davis Law

Moot Court – Spring 2022, Fall 2022, Spring 2023
UC Davis Law

King Hall Negotiations Team Member – 2023-Present
UC Davis Law

King Hall Negotiations Team Intraschool Competition – Spring 2023
UC Davis Law

Journal of International Law and Policy (Submissions Chair) – 2023-Present
UC Davis Law

Journal of International Law and Policy (Research Editor) – 2022-2023
UC Davis Law

Business Law Journal (Editor) – 2022-2023
UC Davis Law

King Hall International Law Association (Vice President) – 2022 - 2023
UC Davis Law

Dean's Honors List – Winter 2020, Spring 2020, Fall 2020, Winter 2021, Spring 2021
UCLA

Dean's List – Fall 2017, Spring 2018, Fall 2018, Spring 2019
Saddleback College

Honors Program – 2018 - 2019
Saddleback College

Volunteer Service

Yolo County Animal Shelter – 2022 - Present

UNOFFICIAL PAGE: 1

LAITH M. ADAWIYA

ID 920-258-398

PROFESSIONAL ACADEMIC RECORD

CURRENT COLLEGE(S): LAW
CURRENT MAJOR(S): LAW

ADMITTED: FALL SEMESTER 2021

INSTITUTION CREDIT:

FALL SEMESTER 2021						
LAW	200	INTRODUCTION TO LAW	S	1.00	.00	
LAW	202	CONTRACTS	B	4.00	12.00	
LAW	203	CIVIL PROCEDURE	B-	5.00	13.50	
LAW	207	RESEARCH & WRITING I	B	2.00	6.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	12.00	11.00	11.00	31.50	2.863	
UC CUM:	12.00	11.00	11.00	31.50	2.863	

SPRING SEMESTER 2022						
LAW	200L	LAWYERING PROCESS LAB	S	.00	.00	
LAW	200S	LAWYERING PROCESS	S	2.00	.00	
LAW	201	PROPERTY	B	4.00	12.00	
LAW	204	TORTS	B+	4.00	13.20	
LAW	205	CONSTITUTIONAL LAW I	A	4.00	16.00	
LAW	208	LGL RESRCH & WRITING II	B	2.00	6.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	16.00	14.00	14.00	47.20	3.371	
UC CUM:	28.00	25.00	25.00	78.70	3.148	

FALL SEMESTER 2022						
LAW	206	CRIMINAL LAW	A-	3.00	11.10	
LAW	227A	CRIMINAL PROCEDURE	B+	3.00	9.90	
LAW	252A	INTRO CRIM LITIGATION	A-	2.00	7.40	
LAW	282	ENERGY LAW	A	2.00	8.00	
LAW	288C	NATIONAL SECURITY LAW	A-	2.00	7.40	
LAW	410A	APPELLATE ADVOCACY I	S	2.00	.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	14.00	12.00	12.00	43.80	3.650	
UC CUM:	42.00	37.00	37.00	122.50	3.310	

SPRING SEMESTER 2023						
LAW	210J	BEST PRACT FOR JUSTICE	A	2.00	8.00	
LAW	219C	EVIDENCE	B-	4.00	10.80	
LAW	267	CIVIL RIGHTS LAW	A-	2.00	7.40	
LAW	296E	ART & CULTURAL LAW	A-	3.00	11.10	
LAW	410B	MOOT COURT	S	2.00	.00	
LAW	413	INTRSCHL COMPETITN	S	2.00	.00	
		COMPL	ATTM	PSSD	GPTS	GPA
TERM:	15.00	11.00	11.00	37.30	3.390	
UC CUM:	57.00	48.00	48.00	159.80	3.329	

FALL SEMESTER 2023						
WORK IN PROGRESS:						
LAW	218	CONSTITUTIONAL LAW II			4.00	
LAW	235	ADMINISTRATIVE LAW			3.00	
LAW	246	FEDERAL JURISDICTION			3.00	
LAW	263A	TRIAL PRACTICE			3.00	
		IN PROGRESS CREDITS:		13.00		

***** CONTINUED ON NEXT COLUMN *****

LAITH M. ADAWIYA

CONTINUED

***** TRANSCRIPT TOTALS *****

TOTAL UNITS COMPLETED: 57.00 UC GPA: 3.329
UC BALANCE POINTS: 63.8

COMMENTS:
LAW WRITING REQUIREMENT SATISFIED - LAW 288C

***** MEMORANDA *****

UNIVERSITY REQUIREMENTS:

PREVIOUS DEGR:
BACHELOR OF ARTS 06/01/21
UC LOS ANGELES (UCLA)

END OF RECORD
UNOFFICIAL UC DAVIS TRANSCRIPT COMPUTER PRODUCED ON
06/03/23 - ISSUED TO STUDENT.

Student Copy / Personal Use Only | [205330834] [ADAWIYA, LAITH]

University of California, Los Angeles
 UNDERGRADUATE Student Copy Transcript Report
 Missing Valid Seal

For Personal Use Only

This is an **unofficial/student copy** of an academic transcript and therefore does not contain the university seal and Registrar's signature. Students who attempt to alter or tamper with this document will be subject to disciplinary action, including possible dismissal, and prosecution permissible by law.

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

Student Information

Name: ADAWIYA, LAITH M
 UCLA ID: 205330834
 Date of Birth: 04/21/XXXX
 Version: 08/2014 | SAITONE
 Generation Date: February 15, 2022 | 12:00:37 PM
 This output is generated only once per hour. Any data changes from this time will be reflected in 1 hour.

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

Program of Study

Admit Date: 09/23/2019
 COLLEGE OF LETTERS AND SCIENCE

Major:
 POLITICAL SCIENCE

Minor:
 HISTORY

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

Degrees | Certificates Awarded

BACHELOR OF ARTS Awarded June 11, 2021
 in POLITICAL SCIENCE
 With a Minor in HISTORY
 Magna Cum Laude

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

Secondary School

TESORO HIGH SCHOOL, June 2017

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

University Requirements

Entry Level Writing satisfied
 American History & Institutions satisfied

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

California Residence Status

Resident

For Personal Use Only
 Unofficial/Student Copy
 Missing Valid Seal

Student Copy / Personal Use Only | [205330834] [ADAWIYA, LAITH]

Transfer Credit

Institution

ADVANCED PLACEMENT

1 Term to 10/2019 Psd 28.0

IRVINE VALLEY COLLEGE

1 Term to 10/2019 4.5

SADDLEBACK COLLEGE

1 Term to 10/2019 87.0

Fall Quarter 2019

Major:

POLITICAL SCIENCE

US ECON-1790-1910

HIST 141A 4.0 14.8 A-

THE PRESIDENCY

POL SCI 140B 4.0 13.2 B+

SEPARATN OF POWERS

POL SCI 145B 4.0 16.0 A

Atm Psd Pts GPA
Term Total 12.0 12.0 44.0 3.667

Winter Quarter 2020

US ECON-1910-NOW

HIST 141B 4.0 16.0 A

PEACE AND WAR

POL SCI 126 4.0 14.8 A-

CONGRESS

POL SCI 140A 4.0 16.0 A

Dean's Honors List

Atm Psd Pts GPA
Term Total 12.0 12.0 46.8 3.900

Spring Quarter 2020

US CIVIL WAR&RECON

HIST 139A 4.0 16.0 A+

FOREIGN RELATION-US

POL SCI 120A 4.0 16.0 A

CIVIL LIBERTIES

POL SCI 145C 4.0 16.0 A+

Due to the COVID-19 pandemic, Passed/
Not Passed grading permitted for many
classes and degree requirements.

Dean's Honors List

Atm Psd Pts GPA
Term Total 12.0 12.0 48.0 4.000

Student Copy / Personal Use Only | [205330834] [ADAWIYA, LAITH]

Fall Quarter 2020

US THGHT 1620-1865	POL SCI 114A	4.0	14.8	A-	
PRES ELECTIONS	POL SCI 149	4.0	16.0	A	
CAREERS IN POLI SCI	POL SCI 149	4.0	16.0	A	
Due to the COVID-19 pandemic, Passed/ Not Passed grading permitted for many classes and degree requirements.					
Dean's Honors List					
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total		12.0	12.0	46.8	3.900

Winter Quarter 2021

RVLU AMER 1760-1800	HIST 138B	4.0	16.0	A+
SUPREME COURT	POL SCI 140C	4.0	16.0	A+
CLNLISM&DCRS&DMCRCY	POL SCI 163B	4.0	16.0	A+
Due to the COVID-19 pandemic, Passed/ Not Passed grading permitted for many classes and degree requirements.				
Dean's Honors List				
	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total	12.0	12.0	48.0	4.000

Spring Quarter 2021

INTRO TO ANIMATION	FILM TV C181A	5.0	20.0	A	
U S 1875-1900	HIST 139B	4.0	16.0	A	
REEL BEATLES	MSC IND 188	4.0	16.0	A+	
ACTING&PRFRMNC-FILM	THEATER 120C	5.0	20.0	A+	
Due to the COVID-19 pandemic, Passed/ Not Passed grading permitted for many classes and degree requirements. Dean's Honors List					
		<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Term Total		18.0	18.0	72.0	4.000

UNDERGRADUATE Totals

	<u>Atm</u>	<u>Psd</u>	<u>Pts</u>	<u>GPA</u>
Pass/No Pass Total	0.0	0.0	N/a	N/a
Graded Total	78.0	78.0	N/a	N/a
Cumulative Total	78.0	78.0	305.6	3.918

Total Non-UC Transfer Credit Accepted 119.5
Total Completed Units 197.5

Student Copy / Personal Use Only | [205330834] [ADAWIYA, LAITH]

END OF RECORD
NO ENTRIES BELOW THIS LINE



June 20, 2023

Dear Judge:

I write in support of Laith Adawiya, a current 2L at the University of California, Davis School of Law (and member of the graduating class of 2024) who is applying for a clerkship in your chambers.

Laith was a student in my Constitutional Law class last spring, the second semester of his 1L year. He earned an A grade, with a raw score that placed him 6th of 66 students in the class. I found his essay responses to be very well written and reasoned, in a way that stood out to me even as I was grading (anonymously) for the quality of its prose and analytical clarity. Laith's overall participation over the semester was strong, too, as he frequently volunteered to respond to difficult questions in class. His responses to cold-calls were in the average range, as I found him to sometimes overcomplicate his analyses. But in the big picture, this is only a marginal concern: I believe he is capable of performing well in a clerkship.

In terms of Laith's potential fit in chambers, Laith consistently came across during the semester as an engaged and diligent student. I believe he would be eager to jump into any clerkship environment.

Please feel free to contact me with any questions.

Sincerely,

Aaron Tang
Professor of Law
UC-Davis School of Law
(530) 752-1476
aatang@ucdavis.edu



February 25, 2023

To Whom it May Concern,

We have had the privilege of teaching Laith Adawiya over the course of the last year. He has taken both our Introduction to Criminal Litigation course and our Best Practices for Justice seminar. Laith is a bright and hardworking law student who excelled in our classes.

He is a valuable contributor in discussions. During an intensive litigation course, Laith was adept at articulating and supporting his position. Perhaps even more impressive, Laith is equally adept at respectfully pushing back against opposing views and ensuring that the outcomes are fair and just. Laith is a strong and passionate candidate who will excel in his pursuit of what is right.

In addition to his participation in class, we have reviewed his legal writing abilities with the briefs he authored for our course. Laith is a fantastic writer. His work product is persuasive and extremely professional. As practicing prosecutors with over thirty years of combined legal experience, we are especially familiar with effective legal writing. Based on the materials we have reviewed, we believe Laith will excel as an advocate.

In summary, we recommend Laith Adawiya highly for the clerkship that he is seeking. He will make a fantastic addition to the program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ryan Wagner".

Ryan Wagner
Adjunct Lecturer
UC Davis School of Law

A handwritten signature in blue ink, appearing to read "Brian Feinberg".

Brian Feinberg
Adjunct Lecturer
UC Davis School of Law

UNIVERSITY OF CALIFORNIA, DAVIS

BERKELEY • DAVIS • IRVINE • LOS ANGELES • MERCED • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

June 20, 2023

Dear Judge,

I would like to express my support for Laith Adawiya's application for a clerkship position with either the State or Federal courts. I feel confident recommending Mr. Adawiya, who I know as Laith, for this position, based on my opportunity to see his work while coaching him, as a second-year law school competitor, in the prestigious American Bar Association National Appellate Advocacy Competition in 2023, and while seeing him perform in the Appellate Advocacy classroom series, during his second year of instruction.

Laith distinguished himself as an outstanding oral advocate, researcher, and team player, while participating in the Moot Court program at King Hall. He performed very well at the Los Angeles regional competition in the 2023 NAAC Competition as a 2-L, where he argued the complex issue of whether an academic freedom exception applied to a professor's classroom speech, which prevented a public university from disciplining the professor for espousing views contrary to the curriculum and values of the university. What I saw during that experience was his command of the courtroom, incredible knowledge of the law of the problem, and his natural ability to answer difficult questions. Laith is a powerful advocate who exudes great knowledge and confidence, while presenting a calm eloquence. But equally important, in the weeks prior to the February competition rounds, I saw that Laith was an incredibly hard worker, who thoughtfully and critically evaluated the strengths and weaknesses of his arguments as well as those of his opposing counsel. Laith has a great mind for the law, and during the competition he was exceptionally deft at responding the court panel's questions, respectfully and persuasively advocating for his side. Moreover, throughout the competition, Laith was respectful to his competitors and supportive of his teammates. During this experience, I was also fortunate to observe his wonderful sense of humor and his enthusiasm for the law and advocacy.

In sum, I believe Laith's great ability to research and synthesize the law, along with his skill as an oral advocate to explain complex legal principles, will make him an excellent addition to any Court's chambers. Also, I am confident that his comfortable style of working with others will allow him to blend in well with the Court's judges, attorneys and staff.

If I can answer any questions or otherwise assist you further in your evaluation of Laith's application, please do not hesitate to call upon me.

Sincerely,

Michael Canzoneri
Continuing Lecturer
UC Davis School of Law
400 Mrak Hall Drive
Davis CA, 95616
(916) 990-5902



Chambers of
JEANNIE M. JOSEPH
JUDGE
C52

Superior Court of California County of Orange

700 CIVIC CENTER DRIVE WEST
SANTA ANA, CA 92701
PHONE: 657-622-5251

June 20, 2023

To Whom It May Concern:

I am writing to recommend Laith Adawiya for a clerkship. Mr. Adawiya served as my extern during the summer of 2022 when he was a 1L. Mr. Adawiya was not only diligent, inquisitive, and hardworking, but he demonstrated excellent legal skills.

Over the course of the summer, Mr. Adawiya researched a number of legal issues that arose in criminal trials over which I presided. One issue was application of the new law on preemptory challenges in a criminal jury trial, how it differed from the prior state of the law, and the effects this law could have in the future. His work product was consistently thorough, well-researched, well-written, and well-thought out. His legal analysis was on point.

In addition, Mr. Adawiya was always keen to learn new things. He met all assignments with enthusiasm, embracing the opportunity to broaden his legal horizons. He took advantage of every opportunity to view all aspects of the justice system, including trials, preliminary hearings, law and motion, and calendar courts on the criminal side, as well as civil and family court matters.

Finally, Mr. Adawiya's personality made him a noteworthy extern. He was professional in interacting with everyone at the courthouse, including judges, attorneys, and staff. He was well-liked by everyone with whom he worked. He was simply a pleasure to have.

In sum, Mr. Adawiya is a stellar candidate for a clerkship, and I cannot recommend him highly enough. Please do not hesitate to contact me at (657) 622-5252 if you need more information.

Sincerely,

A handwritten signature in black ink, appearing to be "J. M. Joseph", written over a horizontal line.

Jeannie M. Joseph
Judge, Orange County Superior Court

Writing Samples

Laith M. Adawiya

The following are portions of two recent writing samples; the first is part of my brief written for the ABA National Appellate Advocacy Competition in the Spring of 2023; it revolves around a professor’s freedom of speech in the classroom, and whether or not there is an “academic freedom” exception to the Supreme Court case *Garcetti v. Ceballos*.

The second is part of a memorandum regarding *Batson/Wheeler* challenges and California’s A.B. 3070. This was written during my externship with the Orange County Superior Court in the Summer of 2022.

ABA National Appellate Advocacy Competition Brief

The U.S. Court of Appeals for the Thirteenth Circuit was correct in finding for Westland Community College; the Petitioner’s First Amendment rights were not violated. The reason for this is two-fold: firstly, this Court’s decision in *Garcetti v. Ceballos* does not - and should not - provide for an “academic freedom” exception for public educators when teaching in classrooms; and secondly, since there is no “academic freedom” exception, and since the Petitioner was performing his “official duties” as a Government employee, his speech was not protected by the First Amendment.

Firstly, *Garcetti* does not provide for an “academic freedom” exception for in-classroom speech. While it is true that this Court mentioned “academic freedom” in *Garcetti*, its mention was little more than dicta in the Majority Opinion; it comprised a small paragraph – three brief lines – responding to Justice Souter’s Dissenting Opinion. *Garcetti v. Ceballos*, 547 U.S. 410, 425 (2006). In addition, it is unclear exactly how far-reaching that concept was intended to be, and what Justice Souter exactly meant by “academic freedom.” Ultimately, the mention of “academic freedom” in *Garcetti* was more of a general indication that not *all* speech on a campus may necessarily be regulated; here, however, the only issue is “in-classroom” speech by an instructor.

It is also noteworthy that it was Justice Souter himself who – in an earlier case; *Board of Regents of University of Wisconsin v. Southworth* – wrote of a University’s ability to dictate what is taught to students; no one claims, he wrote, “that [a] University is somehow required to offer a

Writing Samples

Laith M. Adawiya

spectrum of courses to satisfy a viewpoint neutrality requirement,” for instance. *Board of Regents of University of Wisconsin System v. Southworth*, 529 U.S. 217, 243 (2000). A “University need not provide junior years abroad in North Korea as well as France, instruct in the theory of plutocracy as well as democracy, or teach Nietzsche as well as St. Thomas.” *Id.* There’s an understanding, in other words, that a University can regulate the curriculum communicated to its students.

Here, the Petitioner accuses Westland Community College of attempting to “cast a pall of orthodoxy over the classroom.” *Keyishian v. Board of Regents of University of State of N.Y.*, 385 U.S. 589, 603 (1967). But this is unfounded. The Respondents agree with the Petitioner that academic freedom is an invaluable part of American society. But that academic freedom rests with the institution, not the individual professor. That was the implication of this Court in *Regents of University of California v. Bakke*, and it was the implication of Justice Frankfurter in *Sweezy v. State of New Hampshire*, in which he wrote that “it is the business of a University to provide that atmosphere which is most conducive to speculation, experiment, and creation... to determine for itself on academic grounds who may teach, what may be taught, [and] how it shall be taught.” *Sweezy v. State of New Hampshire*, 354 U.S. 234, 263 (1957).

Indeed, it has been a long-standing premise that schools have the ability to regulate on-campus speech – including that of educators - without falling out of the First Amendment’s favor. This is because, as the Seventh Circuit aptly put it, “a school system does not “regulate” teachers’ speech as much as it hires that speech. Expression is a teacher’s stock in trade, the commodity she sells to her employer in exchange for a salary.” *Mayer v. Monroe County Community School Corp.*, 474 F.3d 477, 479 (2007). And when one is paid a salary, they are expected to adhere to the policies and practices of their employer; this is not a revolutionary concept.

At the end of the day, a community college instructor is no different from any other government employee performing their job functions. Therefore, this court should not create an exception that would hamper a school’s ability to discipline an instructor for in-class speech. This Court noted in *Hazelwood v. Kuhlmeier* that the classroom is not a “public forum” within the normal sense of the phrase - it is “reserved for other intended purposes” under which “school officials may impose reasonable restrictions on the speech of students, teachers, and other

Writing Samples

Laith M. Adawiya

members of the school community.” *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 267 (1988). This is particularly true when dealing with “school-sponsored speech,” or speech “that students, parents, and members of the public might reasonably perceive to bear the” school’s ‘stamp of approval.’ *Id.* at 271. And by simple implication, any speech by an educator inside the classroom, while teaching a class, falls within this category of “school-sponsored speech.”

And the Respondents are not alone in this belief; numerous Circuit Courts have relied heavily on this proposition in the conduct of their judicial affairs.

Justice Alito, writing then for the Third Circuit Court of Appeals, in *Edwards v. Cal. Univ. of Penn.*, acknowledged that “a public university professor does not have a First Amendment right to decide what will be taught in the classroom.” *Edwards v. Cal. Univ. of Penn.*, 156 F.3d 488, 491 (1998).

The Tenth Circuit, too, has acknowledged - as it did in *Adams v. Campbell County* – that educators do not “have an unlimited liberty as to [the] structure and content of the courses” they teach. *Adams v. Campbell County School Dist.*, 511 F.2d 1242, 1247 (1975).

The Eleventh Circuit stated, “we do not find support to conclude that academic freedom is an independent First Amendment right.” *Bishop v. Aronov*, 926 F.2d 1066, 1075 (1991). In *Bishop v. Aronov*, the University of Alabama tried to prevent Dr. Bishop from expressing his religious views in the classroom. In finding that Dr. Bishop’s comments constituted “school-sponsored speech,” the Eleventh Circuit held that “Dr. Bishop’s interest in academic freedom and free speech do[es] not displace the University’s interest inside the classroom,” and that the University of Alabama was well-within its right to prohibit Dr. Bishop from expressing his religious views during class hours. *Id.* at 1076.

The Thirteenth Circuit has also noted - as it did in the proceedings of this case - “that there is no basis for carving out an exception from the *Garcetti* rule for in-class speech of a public college instructor.” R. at 17.

This Court should thus maintain the status quo with respect to *Garcetti*, and explicitly hold that there is no “academic freedom” exception for in-class speech by an instructor.

Writing Samples

Laith M. Adawiya

Moving onto the second point; since there is no “academic freedom” exception for in-classroom speech, the “official duties” test of *Garcetti* should apply, meaning that the Petitioner’s speech was not protected by the First Amendment.

Briefly summarized, at issue in *Garcetti* was a Deputy District Attorney - Cabellos - who claimed he was retaliated against for writing a memorandum pointing out inaccuracies in an affidavit. In holding that Cabellos’ speech was not protected, this Court held that “when public employees make statements pursuant to their official duties, [they] are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline.” *Garcetti*, 547 U.S. at 421. The “controlling factor” in *Garcetti* was the fact that Cabellos had been making “expressions... pursuant [to his] duties as a [public employee].” *Id.*

With all that said, the Respondents would like to acknowledge the importance of exercising one’s rights as a “citizen” while “on the job.” Indeed, the Respondents agree with the Petitioner on this point. After all, this Court noted in the same breath in *Garcetti* that “public employees do not surrender all their First Amendment rights by reason of their employment.” *Id.* at 417.

The threshold question, therefore, is whether or not one is speaking pursuant to their “official duties,” or as a “citizen.” Whether, as this Court acknowledged in *Kennedy v. Bremerton School District*, the employee was “acting within the scope of his duties” when speaking. *Kennedy v. Bremerton School District*, 142 S.Ct. 2407, 2425 (2022). Only if the answer is “yes” does the possibility of a First Amendment violation arise. But in the Petitioner’s case, even assuming all facts alleged in the complaint are true, the answer is a resounding “no.”

For the Petitioner acknowledged, in his own words, that the comments he had made in class were “a valid part of the lesson he was teaching.” R. at 6. In no uncertain terms, he acknowledged that he was fulfilling his role as an educator employed by the Government when speaking inside the classroom. This is compounded by the fact that - similar to *Garcetti* - the Petitioner’s comments were directly related to his responsibilities as an educator. Furthermore,

Writing Samples

Laith M. Adawiya

the Petitioner subsequently defended his comments to his superior, explaining that “philosophy students must learn to have a rational discussion on controversial issues.” R. at 6.

Thus, taking the Petitioner’s words at face value, it is clear that even he believed he was speaking pursuant to his “official duties.” This means that his speech was not shielded by the First Amendment, and Westland Community College was well within its right to regulate it.

To conclude, the Petitioner was clearly acting in accordance with his “official duties” as a Government employee when lecturing students during class time, meaning such speech is not afforded the full breadth of the First Amendment’s protection. Furthermore, it is established precedent - by this Court and Lower Courts - that Universities have the right to regulate an educator’s speech inside the classroom without falling awry of the First Amendment.

The Respondents respectfully request that this Court clarify *Garcetti* with respect to academia as follows: there is no “academic freedom” exception to *Garcetti* for speech by an instructor in a classroom.

The heart of *Garcetti* - whether or not one is speaking pursuant to their “official duties” - should control even in academic public employment circumstances. As such, the First Amendment does not limit a public community college’s power to discipline an instructor for in-class speech. With that said, the Respondents respectfully request that this Court affirm the Court of Appeals’ ruling - that the Petitioner lacked a plausible First Amendment retaliation claim.

Memorandum on *Batson/Wheeler* Challenges and A.B. 3070

A centerpiece of the American judicial system involves the right to a trial by jury. So imperative to the administration of justice was this idea that three of the original ten Amendments comprising the Bill of Rights dealt with it. Indeed, the 5th Amendment forbids an individual to “be held to answer for a capital... crime, unless on a presentment or indictment of a Grand Jury.” U.S. Const. amend. V. In cases of criminal prosecution, the 6th Amendment requires that “the accused shall enjoy [a trial by] an impartial jury of the State and district wherein the crime shall have been committed.” U.S. Const. amend. VI. This has been further interpreted as requiring a jury consisting of a “representative cross-section of the community.”

Writing Samples

Laith M. Adawiya

Taylor v. Louisiana, 419 U.S. 522, 528 (1975). Finally, the 7th Amendment requires that in cases involving a “value of controversy” exceeding \$20, “the right of trial by jury shall be preserved.” U.S. Const. amend. VII. In short, it is evident that the Founders considered the right to a trial by jury an indispensable part of the idea of ‘blind and impartial justice.’

Of course, this right would be moot and inept if the composition of the jury in question was not selected on an impartial basis. This is the issue at hand with respect to the ‘*Batson/Wheeler* Challenge.’ While conducting voir dire, or the selection of a jury, both the plaintiff and defendant are permitted to strike jurors ‘for cause’ if either side determines a valid reason for the jurors being unable to be ‘fair and impartial.’ In addition to these ‘for-cause challenges,’ each side also has a limited number of ‘peremptory challenges’ that can be used to remove any potential juror, without need for a reason. These ‘peremptory challenges’ “traditionally have been viewed as one means of assuring the selection of a qualified and unbiased jury.” *Batson v. Kentucky*, 476 U.S. 79, 91 (1986). At the heart of the ‘*Batson/Wheeler* Challenge’ is the issue of whether race, gender, or other ‘group prejudices’ are being taken into account during voir dire.

The justification for placing limitations on peremptory challenges lies in the history of juror discrimination. It can be said that the history of the United States has been exemplified by the gradual admission of marginalized groups into previously prohibited sectors of public life. One of these has been the ability to serve on a jury, and to not be arbitrarily denied that right simply because of one’s identity. Over the years, courts have utilized the 14th Amendment’s ‘Equal Protection Clause’ as the vehicle for this progress.

As early as 1880, in *Strauder v. West Virginia*, the Supreme Court had acknowledged that the discrimination of jurors on the basis of race was impermissible. Citing the recently ratified 14th Amendment, the Court ruled that “the very idea of a jury is a body... composed of [one’s] neighbors, fellows, associates, persons having the same legal status in society as that which he holds.” *Strauder v. State of W. Virginia*, 100 U.S. 303, 308 (1879). In doing so, the Court overturned a West Virginia statute excluding blacks from serving on juries, holding that it “amount[ed] to a denial of the equal protection of the laws.” *Id.* at 310. From then on, the issue involved the degree to which unconstitutional discrimination was occurring in the selection of a jury, and the requirements to prove such a claim.

Writing Samples

Laith M. Adawiya

In *Batson v. Kentucky*, the Supreme Court was once again confronted with the issue of whether a defendant was “denied equal protection through the State’s use of peremptory challenges to exclude members of his race from the petit jury.” *Batson*, 476 U.S. at 82. Specifically, a black man was charged with burglary, and subsequently convicted by an all-white jury. During the voir dire process, the prosecutor “used his peremptory challenges to strike all four black persons on the venire.” *Id.* at 83. In *Batson*, the Court expanded on the central holding of *Strauder*, ruling that “purposeful racial discrimination in [the] selection of the venire violates a defendant’s right to equal protection because it denies him the protection that a trial by jury is intended to secure.” *Id.* at 86. The Court further added that while the prosecutor normally has discretion in using peremptory challenges “for any reason at all... the Equal Protection Clause forbids the prosecutor to challenge potential jurors solely on account of their race or on the assumption that black jurors... will be unable impartially to consider the State’s case against a black defendant.” *Id.* at 89.

Ultimately, the *Batson* Court found that “a defendant may establish a prima facie case of purposeful discrimination in [the] selection of the petit jury solely on evidence concerning the prosecutor’s exercise of peremptory challenges.” *Id.* at 96. In order to prove this, “the defendant first must show that he is a member of a cognizable racial group, and that the prosecutor has exercised peremptory challenges to remove from the venire members of the defendant’s race.” *Id.* In addition, “the overall facts [must] indicate [that] the prosecutor[’s]” reason for using the challenges was to “exclude the veniremen from the petit jury on account of their race.” *Id.* Finally, it should be noted that “the defendant is entitled to rely on the fact” that peremptory challenges create an opportunity for “those to discriminate who are of a mind to discriminate.” *Id.* “This combination of factors” in the selection of a jury “raises the necessary inference of purposeful discrimination.” *Id.* If this standard has been met, “the burden [then] shifts to the prosecutor to demonstrate that the challenges were exercised for a race-neutral reason.” *People v. Lenix*, 187 P.3d 946, 954 (Cal. 2008). After all this, “the court determines whether the defendant has proven purposeful discrimination.” *Id.*

Aside from race, courts have also wrestled with the use of peremptory challenges on the basis of other characteristics. With respect to the issue of gender, the Supreme Court in *Taylor v. Louisiana* struck down a section of the Louisiana State Constitution providing “that a woman should not be selected for jury service unless she had previously filed a written declaration of her desire to be subject to jury service.” *Taylor*, 419 U.S. at 523. In that case, it was ruled that the

Writing Samples

Laith M. Adawiya

“systematic exclusion of women from jury panels” was a violation of the 6th Amendment’s guarantee of a jury being comprised of a “representative cross-section of the community.” *Id.* at 528. Further, in 1994, the Supreme Court explicitly stated in *J.E.B. v. Alabama ex rel. T.B.* that “the Equal Protection Clause prohibits discrimination in jury selection [and the use of peremptory challenges] on the basis of gender, or on the assumption that an individual will be biased in a particular case” due to their gender. *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127, 146 (1994).

More recently, the 9th Circuit Court of Appeals extended the *Batson* precedent to sexual orientation. In *SmithKline Beecham Corp. v. Abbott Laboratories*, the Court ruled that “equal protection prohibits peremptory strikes based on” that characteristic. *SmithKline Beecham Corp. v. Abbott Laboratories*, 740 F.3d 471, 474 (9th Cir. 2014).

While the aforementioned cases only dealt with the specified issues of race, gender, and sexual orientation, the California Supreme Court had already determined as early as 1978 in *People v. Wheeler* “that the use of peremptory challenges to remove prospective jurors on the sole ground of group bias violates the right to trial by a jury drawn from a representative cross-section of the community under... the California Constitution.” *People v. Wheeler*, 583 P.2d 748, 761-62 (Cal. 1978). Notably, the *Wheeler* Court did not limit the scope of its decision to specified characteristics, but to “group bias” in general. *Id.* It rationalized its decision on the understanding “that in our heterogeneous society jurors will inevitably belong to diverse and often overlapping groups defined by race, religion, ethnic or national origin, sex, age, education, occupation, economic condition, place of resident, and political affiliation.” *Id.* at 755. It is therefore reasonable to assume that the California Supreme Court utilized the phrase “group bias” in its broadest and most general form, in order to encapsulate segments and characteristics of the population that have no valid reason to be discriminated against for jury duty.

Recently, the use of the ‘*Batson/Wheeler* Challenge’ has been altered by legislation in California. Perhaps in an effort to officially codify what *Wheeler* accomplished, A.B. 3070 § 231.7, which became effective on January 1, 2021, prohibits the use of peremptory challenges in criminal cases “on the basis of” a number of protected characteristics, including “race, ethnicity, gender, gender identity, sexual orientation, national origin, or religious affiliation.” Code Civ. Proc., § 226 (2021). In essence, A.B. 3070 § 231.7 legislatively affirms *Batson/Wheeler*, and specifies a range of new categories upon which peremptory challenges cannot be used.

Writing Samples

Laith M. Adawiya

In determining whether or not the peremptory challenge is valid, the California Legislature has guided courts to the standard of “an objectively reasonable person,” and whether there is a “substantial likelihood” that they would view any of those listed characteristics as “factor[s] in the use of the peremptory challenge.” *Id.* The statute defines “an objectively reasonable person” as an individual who “is aware that unconscious bias, in addition to purposeful discrimination, have resulted in the unfair exclusion of potential jurors in the State of California.” *Id.* Furthermore, the burden of a “substantial likelihood” implies “more than a mere possibility but less than a standard of more likely than not.” *Id.* The factors that a court may utilize include those articulated in *Batson*, such as membership of a “perceived cognizable group” by either the “objecting party,” “alleged victim,” or “witnesses.” *Id.* Other factors to be considered include a difference in questioning during voir dire between members of a “cognizable group” and non-members. *Id.*

In addition, A.B. 3070 § 231.7 lays out other reasons that are invalid for peremptory challenges, unless otherwise shown that “an objectively reasonable person would view the rationale as unrelated to the prospective juror’s race, ethnicity,” and other protected characteristics. *Id.* Some of these include an expression of “distrust... with law enforcement or the criminal legal system,” one’s neighborhood, their “ability to speak another language,” and their “dress, attire, or personal appearance.” *Id.*

The new legislation also shifts the burden of proof with respect to peremptory challenges. In *Batson*, the onus was on the challenging party to “establish a prima facie case of purposeful discrimination.” *Batson*, 476 U.S. at 96. Indeed, “the ultimate burden of persuasion regarding racial motivation rest[ed] with, and never shift[ed] from, the opponent of the strike.” *People v. Lenix*, 187 P.3d 946, 954 (Cal. 2008). Now, the California Legislature has placed the burden onto the party that is exercising the peremptory challenge, insofar as they must “state the reasons the peremptory challenge has been exercised.” Code Civ. Proc., § 226 (2021). Following this, “the court evaluate[s] the reasons given,” and makes an ultimate determination on whether “there is a substantial likelihood that an objectively reasonable person would view” the aforementioned characteristics as “factor[s] in the use of the peremptory challenge.” *Id.* This will undoubtedly make it easier to mount a ‘*Batson/Wheeler* Challenge,’ since the moving party’s burden has been severely lessened.

Writing Samples

Laith M. Adawiya

Due to the recency of A.B. 3070 § 231.7, case law is mostly unavailable regarding the legislation. In both *People v. Battle* and *People v. Ardoin*, the California Supreme Court and the California Court of Appeals, respectively, declined to review the legislation due to it not having gone into effect yet. Ultimately, A.B. 3070 § 231.7 has served to codify the *Batson/Wheeler* precedent, as well as extend it to an unprecedented array of categories and characteristics. How this will affect voir dire from a practical perspective, however, remains to be seen.

Applicant Details

First Name	Zartosht
Last Name	Ahlers
Citizenship Status	U. S. Citizen
Email Address	zartosht.ahlers@gmail.com
Address	<div> <div>Address</div> <div> <div>Street</div> <div>7214 Countrywood Court</div> <div>City</div> <div>Springfield</div> <div>State/Territory</div> <div>Virginia</div> <div>Zip</div> <div>22151</div> </div> </div>
Contact Phone Number	7038223095

Applicant Education

BA/BS From	Princeton University
Date of BA/BS	May 2019
JD/LLB From	Columbia University School of Law
	http://www.law.columbia.edu
Date of JD/LLB	May 12, 2024
Class Rank	School does not rank
Law Review/Journal	Yes
Journal(s)	Science and Tech Law Review Journal of Law and Social Problems
Moot Court Experience	Yes
Moot Court Name(s)	Harlan Fiske Stone Moot Court

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	No
Post-graduate Judicial Law Clerk	No

Specialized Work Experience

Recommenders

Harcourt, Bernard
beh2139@columbia.edu
212-854-1997

Waxman, Matthew
mwaxma@law.columbia.edu
212-854-0592

Purdy, Jedediah
purdy@law.duke.edu
(212) 854-0593

Richman, Dan
drichm@law.columbia.edu
212-854-9370

This applicant has certified that all data entered in this profile and any application documents are true and correct.

Zartosht Ahlers
7214 Countrywood Court
Springfield, VA 22151
(703) 822-3095
za2274@columbia.edu

June 12, 2023

The Honorable Jamal K. Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker,

I am a rising third-year student at Columbia Law School, where I am a Public Interest/Public Service Fellow. I write to apply for a judicial clerkship in your chambers for the 2024-25 term or a term thereafter.

I am interested in a clerkship with you given your professional background. After clerking, I am hoping to work as a federal prosecutor and am particularly interested in investigations of complex white-collar crimes—an area that I am focusing on this summer at the Money Laundering and Asset Recovery Section of the DOJ. I would be thrilled to clerk for you in light of your extensive experience in this area.

Additionally, I am keen to return to Virginia upon graduating law school. I attended middle and high-school in Virginia and worked in the area for two years after graduating undergrad.

Enclosed please find my resume, law school transcript, and a writing sample. Also enclosed are letters of recommendation from Professors Daniel Richman (drichm@columbia.edu, (212) 854-9370), Matthew Waxman (mwaxma@columbia.edu, (212) 854-0592), Bernard Harcourt (bernard.harcourt@columbia.edu, (212) 854-1997), and Jedediah Purdy (purdy@duke.law.edu, (919) 660-3952). All of my recommenders would welcome further opportunities to discuss my candidacy.

Please let me know if there is anything else I can provide to aid in your review. Thank you for your time and consideration.

Respectfully,

Zartosht Ahlers

ZARTOSHT AHLERS

703-822-3095 • za2274@columbia.edu

EDUCATION

COLUMBIA LAW SCHOOL, New York, NY

J.D., expected May 2024

Honors: Harlan Fiske Stone Scholar, 2021-2022, 2022-2023
Max Berger '71 Public Interest/Public Service Fellow
John Paul Stevens Fellow

Activities: Semi-finalist, Harlan Fiske Stone Moot Court
Articles Editor, Science and Tech Law Review
Research Assistant, Human Rights Clinic: East and Central Africa
Research Assistant, Professor Bernard Harcourt
Teaching Fellow, Professor Mala Chatterjee (Torts), Fall 2022
Sponsored Athlete, Central Park Track Club/Tracksmith

PRINCETON UNIVERSITY, Princeton, NJ

B.A. in Politics (concentration in International Relations), received May 2019

Honors: High Meadows Fellowship
Peer Leadership Award

Activities: Residential Advisor, First College
Research Assistant to Professor Emmanuel Kreike

Independent Work: *Effect of U.S. Border Policy on the Tohono O'odham Nation*
ISIS' Legitimation Strategy in Raqqa
International Silence after the Halabja Massacre

EXPERIENCE

Department of Justice, Money Laundering and Asset Recovery Section

Washington, D.C.

Legal Intern

June 2023 – August 2023

Surveillance Technology Oversight Project

New York City, NY

Legal Intern

June 2022 – August 2022

Authored a white paper on the constitutional status of geofence warrants and government location data purchases in the aftermath of *Carpenter*. Analyzed the feasibility of using copyright protection claims to limit government access to facial recognition technology. Drafted memos of support for various local laws.

The Wilderness Society

Washington, D.C.

Energy and Climate Policy Fellow

July 2019 – July 2021

Researched renewable energy development on public lands, issues related to environmental and Indigenous justice, and environmental deregulation. Assisted engagement with the Bureau of Land Management on land-use management plans.

Gaia Sustainable Management Institute

Yangon, Myanmar

Researcher

May 2018 – August 2018

Conducted research for a local peace-oriented non-profit. Conducted interviews across Myanmar, including with the spokesperson for the Kachin Independence Organization (KIO) and Internally Displaced People (IDP) on a tour through refugee camps.

American Civil Liberties Union of the Nation's Capital

Washington, D.C.

Intern

May 2013 – August 2013

Drafted ACLU-NCA's proposal for the 2013 D.C. Marijuana Decriminalization bill. Drafted a response to the D.C. Video Visitation Modification Act of 2013.

LANGUAGE SKILLS: German (fluent); Farsi (fluent)



Registration Services

law.columbia.edu/registration
 435 West 116th Street, Box A-25
 New York, NY 10027
 T 212 854 2668
 registrar@law.columbia.edu

CLS TRANSCRIPT (Unofficial)

06/02/2023 11:00:18

Program: Juris Doctor

Zartosht Ahlers

Spring 2023

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6109-1	Criminal Investigations	Livingston, Debra A.	3.0	A-
L6241-1	Evidence	Capra, Daniel	4.0	B+
L6169-2	Legislation and Regulation	Briffault, Richard	4.0	A-
L6680-1	Moot Court Stone Honor Competition	Bernhardt, Sophia	0.0	CR
L8866-1	S. Contemporary Critical Thought II	Harcourt, Bernard E.	2.0	A
L9327-1	S. Internet and Computer Crimes	DeMarco, Joseph; Komatireddy, Saritha	2.0	A-
L6683-1	Supervised Research Paper	Richman, Daniel	1.0	A

Total Registered Points: 16.0**Total Earned Points: 16.0**

Fall 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6238-1	Criminal Adjudication	Richman, Daniel	3.0	A
L6425-1	Federal Courts	Metzger, Gillian	4.0	B+
L6675-1	Major Writing Credit	Richman, Daniel	0.0	CR
L6672-1	Minor Writing Credit	Bernhardt, Sophia	0.0	CR
L6680-1	Moot Court Stone Honor Competition	Bernhardt, Sophia	0.0	CR
L8866-1	S. Contemporary Critical Thought I	Harcourt, Bernard E.	1.0	A
L8951-1	S. Cybersecurity, Data Privacy and Surveillance Law	Richman, Daniel; Tannenbaum, Andrew; Waxman, Matthew C.	2.0	A
L6683-1	Supervised Research Paper	Richman, Daniel	2.0	A
L6822-1	Teaching Fellows	Chatterjee, Mala	4.0	CR

Total Registered Points: 16.0**Total Earned Points: 16.0**

Spring 2022

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6108-2	Criminal Law	Seo, Sarah A.	3.0	B+
L6679-1	Foundation Year Moot Court		0.0	CR
L6474-1	Law of the Political Process	Greene, Jamal	3.0	A
L6121-28	Legal Practice Workshop II	Siegel, Jonathan	1.0	P
L6116-2	Property	Purdy, Jedediah S.	4.0	A
L6118-1	Torts	Huang, Bert	4.0	A-

Total Registered Points: 15.0**Total Earned Points: 15.0****January 2022**

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6130-2	Legal Methods II: Legal Theory	Purdy, Jedediah S.	1.0	CR

Total Registered Points: 1.0**Total Earned Points: 1.0****Fall 2021**

Course ID	Course Name	Instructor(s)	Points	Final Grade
L6101-4	Civil Procedure	Sturm, Susan P.	4.0	A-
L6133-4	Constitutional Law	Ponsa-Kraus, Christina D.	4.0	B+
L6105-8	Contracts	Kraus, Jody	4.0	B+
L6113-3	Legal Methods	Harcourt, Bernard E.	1.0	CR
L6115-28	Legal Practice Workshop I	Izumo, Alice; Siegel, Jonathan	2.0	HP

Total Registered Points: 15.0**Total Earned Points: 15.0****Total Registered JD Program Points: 63.0****Total Earned JD Program Points: 63.0****Honors and Prizes**

Academic Year	Honor / Prize	Award Class
2021-22	Harlan Fiske Stone	1L

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

It is with the greatest enthusiasm that I write this letter of recommendation on behalf of Zartosht Ahlers, who is applying to clerk in your chambers. Mr. Ahlers is a stand-out student who writes extremely well and is a pleasure to work with. He has very strong research skills, writes beautifully and seamlessly, and is incredibly responsive, thorough, punctual, and professional, while also being at the same time charming. I recommend him highly.

I met Mr. Ahlers when he took my Legal Methods class in his 1L year in the Fall of 2021. He was an excellent student in and out of class—always well prepared, always having something insightful to contribute to class, always sensitive to his student peers. I met with him on several occasions outside of class, and he always impressed me greatly with his thoughtfulness and intelligence.

This past year, I had Mr. Ahlers again in a small seminar in legal and political theory, and he again excelled. He wrote excellent papers, reflecting his strong research and writing skills. He was also a pleasure to work with in a small classroom setting. He is extremely mature and professional.

I offer my strongest recommendation of Zartosht Ahlers. Please do not hesitate to call me if you have any questions.

Sincerely yours,

Bernard E. Harcourt

Bernard Harcourt - beh2139@columbia.edu - 212-854-1997

June 06, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

Clerkship Recommendation for Zartosht Ahlers

I highly recommend this superb clerkship candidate. His personal story as an immigrant and son of refugees is inspirational and he is an outstanding student and leader at Columbia Law School.

During the 2022 Fall semester, Zartosht was one of the very best students in my “Cybersecurity, Data Privacy and Surveillance Law” seminar. His terrific research paper analyzed whether, and how, the binary search doctrine should apply to hash-value matching. Hash-value matching is a technique that informs the user of the technique whether two digital files are identical without revealing anything about the content of the files. Zartosht’s paper carefully and elegantly argued that while the use of hash-value matching to identify child sexual abuse materials was unlikely to require a warrant, the increasing prevalence of machine learning models that are able to “search” a vast majority of digital files raises concerns about the applicability of the binary search doctrine to the digital context. Throughout the semester, I could always count on Zartosht to contribute smart commentary on the week’s readings.

Zartosht is a leader in the Columbia Law School community, who brings passion and thoughtfulness—as well as an infectious good humor—to all his pursuits. He was awarded a John Paul Stevens Fellowship for his 1L summer and was named a Harlan Fiske Stone Scholar for his elite 1L academic performance. During his second year, Zartosht was a semi-finalist at the Harlan Fiske Stone Moot Court Competition, Columbia Law School’s annual moot court competition. Testifying to the high regard in which his peers hold him, Zartosht is also an incoming articles editor for the Science and Tech Law Review. He is a great pleasure to work with and would make a terrific member of any chambers team.

Motivated heavily by his upbringing as the son of a refugee from Iran, and an immigrant (in his early teens) himself, Zartosht is deeply committed to a public interest/service career. He is the recipient of a Max Berger ’71 Public Interest/Public Service Fellowship, thereby pledging himself to pursuing a career in the public sector immediately upon graduation. He has been making the most of his law school summers, working for advocacy organizations and the Department of Justice on cutting-edge issues at the intersection of law and technology.

This is an outstanding candidate. I highly recommend him.

Sincerely,

Matthew Waxman
Livi Librescu Professor of Law
Faculty Chair of the National Security Law Program

Matthew Waxman - mwaxma@law.columbia.edu - 212-854-0592

June 07, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Dear Judge Walker:

I am genuinely delighted to recommend Zartosht Ahlers for a clerkship in your chambers. He's a very special person—one of my favorite students from the several years I spent on the faculty at Columbia, and, indeed, of all my nearly 20 years of teaching. I think you'll be very pleased if you hire him: he'll do excellent work and you'll be glad to know him for the rest of your life.

Zartosht stood out from the beginning in Property as a student willing to speak forcefully on hard questions. He brought evident passion to questions of fairness in the law, voicing deep feeling for the plight of those who, for instance, have no property in a system of private ownership yet still need a place to go. He came to my office hours to discuss all sorts of questions, some connected with property law, others quite distinct: What can a democracy do about pernicious misinformation online? Why isn't the subway free to use? I had the impression of a mind constantly alight with ideas.

With the most impassioned students, the question is always whether they can deliver. Zartosht's exam showed that he can. He earned an A in my course and could easily have been one of the tiny handful of students to whom I am allowed to award an A+. He is as analytically acute and doctrinally sure-footed as he is creative and energetic. Had I been staying at Columbia (rather than returning, for family reasons, to Duke), I would certainly have asked him to serve as a teaching assistant, a high honor for Columbia students.

I've since learned more about Zartosht. His energy is extraordinary. This is a young person who, a week before his 1L fall exams, ran a 15K race in under 50 minutes, and a year earlier ran a half-marathon in under 70 minutes. During his 1L year he was running 80-90 miles per week and was a "sponsored runner" in the Central Park Track Club. (This means he had a corporate sponsor, the running brand Tracksmith.) Before law school, while working at the Wilderness Society, he found opportunities to take 24-hour hikes (hiking all night) along with intensive rock-climbing and trail-running. None of this seems to detract from his academic performance; nonetheless, in a sign of his priorities, he has stepped back from competitive running in his second year to concentrate on his studies.

His personal story is also remarkable. He's the son of an Iranian political refugee father and a German mother, who still speaks a different language with each parent (and is himself fluent in both Farsi and German as well as English). He spent his first 13 years in fairly real poverty in Germany, when his father worked a variety of menial jobs to support the family and kept up pro-democracy work in the Iranian diaspora. Zartosht tells me that his father is disillusioned by the lifelong disappointment of his political efforts, but Zartosht admires his father's commitment and hopes to do meaningful pro-democracy work himself.

I really can't overstate what a fine person Zartosht is—super-smart, impassioned, with boundless energy. Much of this will be apparent as soon as you meet him. Please let me assure you that he has the analytic focus and work ethic to go with his more overt strengths. I think he'll make a splendid clerk and I hope you'll decide to hire him.

Sincerely yours,

Jedediah Purdy
Raphael Lemkin Professor of Law

Jedediah Purdy - purdy@law.duke.edu - (212) 854-0593

COLUMBIA LAW SCHOOL
435 West 116th Street
New York, NY 10027

June 05, 2023

The Honorable Jamar Walker
Walter E. Hoffman United States Courthouse
600 Granby Street
Norfolk, VA 23510-1915

Re: Zartosht Ahlers

Dear Judge Walker:

I write to enthusiastically support the application of Zartosht Ahlers – a Columbia Law School 3L (class of 2024) – to clerk in your chambers. He's flat-out terrific, with an extraordinary personal story, and I think you'd like him a lot.

I got to know Zartosht in his 1L year when I became his faculty mentor as part of the Public Interest/Public Service Fellowship he had been awarded. It was a pleasure to work with him from the very start, because of his infectious good humor, keen intelligence, maturity, breadth of interests, and enormous commitment to public interest and public service work.

By Zartosht's 2L year, I became extraordinarily familiar with his work, as he asked me to supervise his Note for the Science and Tech Law Review and also ached both my Criminal Adjudication class and the Cybersecurity, Data Privacy, and Surveillance Law seminar that I teach with my colleagues Matt Waxman and Andrew Tannenbaum.

Zartosht's work on his Note has been extraordinarily impressive. Unlike so many students, he came in with a plan and executed it beautifully, with his characteristic sharp intellect and refusal to accept the mushy analyses of others. Courts around the country, both federal and state, are increasingly confronted with Government applications for geofence warrants – warrants, generally directed at Google – that seek to identify devices (usually cellphones) present near a particular location at a particular time (usually a crime scene). In the face of the doctrinal uncertainties created by *Carpenter v. United States*, risk-averse law enforcement authorities have worked with Google to devise procedures for these reverse location searches that narrow down the scope of information the Government obtains via such warrants, procedures that a growing number of courts have accepted and/or modified. The collaborative development of these procedures, however, means that some basic aspects of geofence warrants have gone underexplored: what exactly does the Fourth Amendment require? Policy aside, do cellphone users really have a reasonable expectation of privacy in the anonymized data that Google currently hands over as an initial step of its geofence procedure? And once the Government gets anonymized location data for a particular device, why can't it simply use a subpoena to deanonymize a particular device?

Zartosht's readiness to ask and answer these basic questions – going to first constitutional principles -- brings a breadth of fresh air to the labored doctrinal discussions, shaped by the Google procedures that dominate the field. His cutting analysis and crystal-clear prose have been a pleasure to read as he has pushed through the paper. He responded to criticism with speed and was particularly impressive when he restructured the paper to conform to analytical changes.

Meanwhile, while working on his Note and taking a heavier courseload than most of his peers, Zartosht was a standout participant in my Criminal Adjudication class – regularly contributing invariably smart comments and writing a terrific exam. He was also an exceptional contributor to my Cybersecurity seminar, bringing a technical sophistication and sense of doctrinal nuance to bear on every topic. His final paper offered a wonderful example of both, drawing on binary search doctrine to argue that the Fourth Amendment does not require a warrant when hash-value matching is used to search for Child Sexual Abuse Material that has known “digital fingerprints” (hash values). Once again, the clarity and power of the analysis, and its readiness to concede weaknesses, was impressive indeed, as was the graceful prose.

As Zartosht's performance in the classes he took with me was invariably top-notch, I was surprised by some of his other grades – absolutely fine, but not superlative. I've no grand explanation, but would not be surprised if his grades only improve.

Zartosht's minimalist resolution of the geofence issue; his cyber seminar paper, and many of his comments during that seminar left me a bit confused. I knew his extensive public interest background – marijuana decriminalization work for the ACLU; refugee work for the Gaia Sustainable Management Institute; two years as an energy and climate policy fellow at the Wilderness Society, and most relevantly, an internship at the Surveillance Technology Oversight Project – yet he regularly advanced legal positions that, while careful and nuanced, were quite accommodating of law enforcement interests.

It wasn't that Zartosht had held back at the Oversight Project. Indeed, at my request, David Siffert, his supervisor there (and also a clinical adjunct at NYU Law), wrote me:

Zartosht was easily one of the best interns the Surveillance Technology Oversight Project has had during my time there. Zartosht's research and writing skills were excellent, and he was both responsible and extremely well-liked. But what really set Zartosht apart was his enthusiasm for the work. Zartosht threw himself into his projects with a sense of careful excitement, soaking up so much information that he was able to educate the entire STOP team about countless important legal issues. It was

Dan Richman - drichm@law.columbia.edu - 212-854-9370

a pleasure to work with Zartosht, and a pleasure to learn from him. As a former clerk on both a federal trial court (SDNY) and state high court (NY Court of Appeals), I am confident that Zartosht's interest in legal and factual issues, alongside his research and writing skills, will set him apart as an excellent law clerk.

Zartosht made everything clear when I asked him to reconcile his diverse commitments. His father, a political activist in Iran, fled that country in the wake of the Islamic Revolution and settled in one of the poorest neighborhoods in Berlin, where Zartosht grew up until, at thirteen, his parents brought him to the US for a better life. He has explained:

My father often portrays his own life as a cautionary tale, offering it to discourage me from pursuing a public service career. He reminds me of our families' financial difficulties and how his four decades of activism have done little to improve the lives of his Iranian co-patriots or allow him any professional success.

But I have never seen my fathers' career like that. I admire my father because he does the right thing for no other reason than because it's the right thing to do. I aspire to have a career like my father's—not a career of success or accolades, but one lived with integrity. I aspire to have the personal strength to make the decisions that align with my beliefs, even if it might result in a career that doesn't unfold to its full potential.

Zartosht learned English and ended up at Princeton, where, in addition to studying International Relations he "fell in love with America's public lands." That led to his post-graduate work at The Wilderness Society, where among other things he learned about governance:

At the end of the planning process for a specific region, the Department of Interior would publish a Resource Management Plan (RMP). While I came to TWS aspiring to throw unyielding blockades in the path of developers, I was much prouder of the resulting compromises: the RMP had undergone a complex process, received input from all stakeholders, and found a solution that was not ideal for any individual stakeholder but purported to best meet the needs of our pluralist society. I began to see the RMP as the product of our democracy in action.

He had a similar epiphany when working at STOP during his 1L summer, where he found a strategy focusing on impeding the enforcement of statutes enacted after a democratic process to be the antithesis of the collaborative and pluralist approach of his work at The Wilderness Society. And he arrived at a new goal:

By the end of my internship at STOP, I realized I wanted to work as a prosecutor. My work at TWS and the lessons I drew from my father's experiences with the Iranian Revolution led me to conclude that I wanted to work in a career that allowed me to effectuate stable change in society in a way that simultaneously strengthened our democratic institutions, not by putting limits on the power of these institutions. At the same time, I aspired to hold antisocial actors accountable for their self-serving behavior.

I think Zartosht will be a wonderful prosecutor and will do what I can to help him toward that goal. He has the personal integrity, keen intelligence, and intellectual humility that, combined with his antipathy to illegitimate exercises of power and his open personality make him the perfect candidate.

Personally, Zartosht is self-effacing, good humored and great company. Bottom line is that this is super-smart, hypercompetent, young lawyer with a capacious intellect and extraordinary writing skills who would be an absolute pleasure to work with and would be a spectacular law clerk.

Respectfully,

Daniel Richman

ZARTOSHT AHLERS

(703) 822-3095 • za2274@columbia.edu

Writing Sample

The following writing sample is a brief submitted to the semi-final round of the 2022-23 Harlan Fiske Stone Moot Court Competition, Columbia Law School's annual school-wide moot court competition. It has been minimally edited by my co-counsel, who briefed and argued a different issue.

The competition was based on a hypothetical scenario in which defendant, William Joseph Wood, was prosecuted in a federal district court for assault committed on a tribal reservation. The jurisdiction of the federal court was based, in part, on Wood's status as an 'Indian' under the Major Crimes Act, 18 U.S.C. § 1153.

On appeal, Wood, among other issues, challenged the district court's jury instruction for determining whether a criminal defendant should be considered an 'Indian' under the Major Crimes Act. I argued this issue while my co-counsel argued a separate issue pertaining to Wood's subsequent sentencing.

The district court below instructed the jury as follows:

[T]he government must prove each of the following elements beyond a reasonable doubt . . . [that] the defendant is an Indian under Section 1153 of Title 18 of the United States Code. For the defendant to be found to be an Indian, the government must prove each of the following elements beyond a reasonable doubt:

1. that the defendant is descended from indigenous American ancestors; and
2. that the defendant was affiliated with a federally recognized tribe at or around the time of the offense.

The issue is on appeal in the United States Court of Appeals for the Sixth Circuit. Parties prepared briefs addressing "the proper standard for determining whether a criminal defendant should be considered an 'Indian' under the Major Crimes Act, 18 U.S.C. § 1153, and [whether] the district court's jury instructions adequately reflect that proper standard[.]"

I argued on behalf of defendant William Joseph Wood as appellant.

ISSUE 1: MAJOR CRIMES ACT

I. BACKGROUND

Over the objections of both parties, R. at 16, the district court judge below, the Honorable Atticus Silverstein, instructed the jury with, in the words of the prosecution, a “threadbare,” R. at 17, test for deciding whether the Defendant, William Joseph Wood, was an Indian at the time of the offense under the Major Crimes Act (MCA). Judge Silverstein told the jury that “[f]or the defendant to be found to be an Indian, the government must prove . . . First, that the defendant is descended from indigenous American ancestors; and Second, that the defendant was affiliated with a federally recognized tribe at or around the time of the offense.” R. at 21.

These jury instructions have never been used by another court because they run afoul of the Equal Protection Clause, the text of the statute, and Congress’ explicit intent. We urge this Court to reverse.

II. STANDARD OF REVIEW

“If a party preserves an objection to a jury instruction,” the Sixth Circuit “review[s] the instruction to see whether the charge, taken as a whole, fairly and adequately submits the issues and applicable law to the jury.” United States v. Hendrickson, 822 F.3d 812, 818 (6th Cir. 2016). “The accuracy of jury instructions is a question of law, which we review de novo.” Id.

However, objections to jury instructions must be preserved. Preserving an objection requires a defendant to “inform the court . . . [of the] objection . . . and the grounds for that objection.” Fed. R. Crim. P. 51. The defendant must “object with that reasonable degree of specificity which would have adequately apprised the trial court of the true basis for his objection.” United States v. LeBlanc, 612 F.2d 1012, 1014 (6th Cir. 1980) (quoting United States v. Fendley, 522 F.2d 181, 186 (5th Cir. 1975)). This “provides the district court with an opportunity to address the error in the first instance

and allows this court to engage in more meaningful review.” United States v. Bostic, 371 F.3d 865, 871 (6th Cir. 2004).

Where an error has been made, the “government bears the burden to prove that any error was harmless.” United States v. Newsom, 452 F.3d 593, 602 (6th Cir. 2006). An error is harmless only “when it appears beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” United States v. Baldwin, 418 F.3d 575, 582 (6th Cir. 2005). In this analysis, “harmless-error review looks . . . to the basis on which the jury actually rested its verdict.” Sullivan v. Louisiana, 508 U.S. 275, 279 (1993).

Even where an error does *not* affect the verdict, the Supreme Court has recognized that “some errors should not be deemed harmless.” Weaver v. Massachusetts, 137 S. Ct. 1899, 1907 (2017). These errors are called ‘structural errors,’ and when they occur, “the defendant generally is entitled to ‘automatic reversal’ regardless of the error’s actual ‘effect on the outcome.’” Id. at 1910. One type of structural error is where trial error deprives the defendant of a “right [that] is not designed to protect the defendant from erroneous conviction but instead protects some other interest.” Id. at 1908.

III. THE JURY INSTRUCTIONS VIOLATE THE EQUAL PROTECTION CLAUSE

A. Background

Absent narrow tailoring to satisfy a compelling government interest, the Equal Protection Clause forbids the use of race as a factor for differential treatment. See, e.g., Brown v. Bd. of Educ., 349 U.S. 294 (1955). This is true even if race is considered alongside other permissible factors. See, e.g., Gratz v. Bollinger, 539 U.S. 244 (2003).

However, in Morton v. Mancari, 417 U.S. 535 (1974), the Supreme Court articulated a narrow exception to this rule that allows for government action pertaining to Indian tribes. This narrow exception stems directly from the “centuries-old nation-to-nation political relationship”

between the Federal Government and the Indian tribes. Brackeen v. Haaland, 994 F.3d 249, 281 (5th Cir. 2021). Federally recognized tribes have a “unique legal status . . . under federal law” based on “a history of treaties” and Congress’s “assumption of a ‘guardian-ward’ status,” enshrined in Article I, Section 8, Clause 3, and Article II, Section 2, Clause 2, of the U.S. Constitution. Mancari, 417 U.S. at 551–52.

Consider the Supreme Court’s opinion in United States v. Rogers, 45 U.S. 567 (1846), which has often served as a touchstone in defining what it means to be ‘Indian.’ In Rogers, the Court found that for an individual to be an Indian, it was not enough to be a “citizen of the Cherokee nation” if the individual did not have Indian blood. Id. at 568, 573. Therefore, Rogers “was still a white man, of the white race, and therefore not within the exception in the act of Congress.” Id. Ever since, courts, see, e.g., United States v. Prentiss, 273 F.3d 1277, 1283 (10th Cir. 2001), legislative bodies, see, e.g., 25 U.S.C. § 5129, and agencies, see, e.g., 44 BIAM 335, 3.1, have distilled the reasoning in Rogers into a two-part test that broadly requires that an individual “(1) has some Indian blood,” see, e.g., Prentiss, 273 F.3d at 1283; and (2) is either “recognized as an Indian by a tribe or the federal government,” see, e.g., id., or is “a member of a Federally-recognized Indian tribe,” see, e.g., 44 BIAM 335, 3.1.

Of course, as the Supreme Court observed in Mancari, the widespread adoption of some form of the Rogers test means “every piece of legislation dealing with Indian tribes and reservations . . . single[s] out for special treatment a constituency of tribal Indians living on or near reservations.” Mancari, 417 U.S. at 552. In any other context, this would constitute an impermissible racial classification. For instance, various formulations of the Rogers test look to whether an individual has “some Indian blood,” but no statute could permissibly distinguish between individuals based on whether one of them has “some [Asian] blood.”

According to Mancari, this discrepancy is justified because a blood quantum requirement is necessary for the government to meet the “enduring obligations [it] owes to the Indians,” Brackeen, 994 F.3d at 281, while limiting the number of people who can claim benefits. See Paul Spruhan, A Legal History of Blood Quantum in Federal Indian Law to 1935, 51 S.D. L. REV. 1 (2006). In the words of the Mancari Court, the unique “legal relationship between the Federal Government,” Mancari, 417 U.S. at 550, and “quasi-sovereign” federally recognized tribes, id. at 554, means the Federal Government may use a racial factor (such as a blood quantum) to identify Indians for differential treatment. The use of an otherwise impermissible test is constitutionally permitted because it is directly tied to the accomplishment of the “solemn commitment of the Government toward the Indians.” Id. at 552.

This does not mean any classification of Indians is permissible. Mancari makes clear that a constitutionally permissible distinction must be “political rather than racial in nature,” Mancari, 417 U.S. at 554 n.24, and be “reasonably and directly related to a legitimate, nonracially based goal,” id. at 554, to fall under this “narrow,” id. at 548, exception to typical Equal Protection Clause analysis. Otherwise, a classification of Indians would not further the unique ends which justify the exception. So, Rogers’s two-part test, which includes a racial element, is permissible, but only so long as the second prong ensures that the test as a whole inquires into an individual’s political status as an Indian.

B. Which Classifications Are Permissibly Political In Nature?

The *only* construction of a classification of Indians that the Supreme Court has definitively approved as ‘political,’ and thereby constitutionally permissible, has inquired whether an individual is a member of a federally recognized tribe. See Mancari, 417 U.S. at 554 (“The preference . . . applie[d] only to members of ‘federally recognized’ tribes.”); Fisher v. Dist. Ct. of Sixteenth Jud. Dist. of Montana, 424 U.S. 382, 387 (1976) (upholding Northern Cheyenne Tribe’s establishment of

Tribal Court that granted it jurisdiction over adoptions “among members of the Northern Cheyenne Tribe”); Washington v. Wash. State Com. Passenger Fishing Vessel, 443 U.S. 658, 689 (1979) (allowing steelhead quota for “members of the Indian tribes” that have treaty with federal government).

Particularly germane to Wood’s case is United States v. Antelope, where the Supreme Court upheld the constitutionality of the MCA against an equal protection challenge for “subjecting individuals to federal prosecution by virtue of their status as Indians.” 430 U.S. 641, 642 (1977). The Court permitted the differential treatment of Indians by the MCA because “respondents were not subjected to federal criminal jurisdiction because they are of the Indian race but because they are *enrolled members* of the Coeur d’Alene Tribe.” Id. at 646 (emphasis added). As such, the Court explained that the classification was “rooted in the unique status of Indians as ‘a separate people’ with their own *political* institutions.” Id. (emphasis added).

In contrast, the Court struck down a statute that gave preference for native Hawaiians, even while recognizing that the Federal Government has a “a guardian-ward relationship with the native Hawaiians . . . analogous to the relationship between the United States and the Indian tribes.” Rice v. Cayetano, 528 U.S. 495, 511 (2000). Rice deemed the statute impermissible on equal protection grounds because the statute applied to “those persons who are descendants of people inhabiting the Hawaiian Islands in 1778.” Id. at 499. Finding that ancestry was “a proxy for race,” id. at 514, the Court distinguished Mancari, where “although the classification [also] had a racial component,” id. at 519, it extended “only to members of ‘federally recognized’ tribes,” id. at 519–20 (quoting Mancari, 417 U.S. at 553 n.24). The Court concluded that Mancari could not be extended to permit for the classification “of tribal Indians,” Rice, 528 U.S. at 520, absent an inquiry into political status.

It is important to note that we are not arguing that ‘membership’ is necessarily the *only* permissible formulation of the second prong that makes the entire test constitutionally permissible.

Perhaps inquiring whether the individual has been ‘recognized’ as an Indian by the tribe or by the federal government is a sufficiently political classification. As Antelope explains, “enrollment in an official tribe has not been held to be an absolute requirement for federal jurisdiction.” 430 U.S. at 647 n.7. We argue only that Mancari and Rice require an exclusively political classification. The jury instructions of the district court judge below fail this requirement.

C. Inquiring Into An Individual’s ‘Affiliation’ With A Federally Recognized Tribe Fails This Requirement

Judge Silverstein instructed the jury that “[f]or the defendant to be found to be an Indian, the government must prove . . . First, that the defendant is descended from indigenous American ancestors; and Second, that the defendant was affiliated with a federally recognized tribe at or around the time of the offense.” R. at 21.

The first prong of these instructions is a racial test. So, for the jury instructions as a whole to be permissible, the second prong must be a classification “derive[d] from the quasi-sovereign status of [a federally recognized tribe] under federal law.” Fisher, 424 U.S. at 390. Only then is the classification “political rather than racial in nature,” Mancari, 417 U.S. at 554, and thereby acceptable given the unique constitutional status of federally recognized tribes.

Requiring an individual to be ‘affiliated with a federally recognized tribe’ fails to turn this classification into a permissible political classification. Affiliated is defined as “closely associated with another typically in a dependent or subordinate position.” Affiliated, MERRIAM-WEBSTER DICTIONARY ONLINE, <https://www.merriam-webster.com/dictionary/affiliated> (last visited Jan. 22, 2023). However, one can be closely associated with a federally recognized tribe without being a member of that political sovereign in any sense.

For instance, ‘affiliation’ can be established through racial status alone. A jury could reasonably conclude that an individual whose parents were members of a tribe is ‘closely associated’ with that tribe—even if that individual has no other attachment to that tribe.

Moreover, ‘affiliation’ can also be established through relationships that are not political. A jury could reasonably conclude that an individual is ‘closely associated’ with a tribe if that individual works for a tribal casino—even though that sort of professional relationship is not of the political nature required by Mancari.

An individual might even be considered ‘closely associated’ with a tribe after publicly denouncing their relationship with the tribe, publicly severing all tribal relations, and writing an op-ed on how ‘the tribe does not represent [them] politically because of irreconcilable political differences.’ After all, that individual has a history with that tribe, and a negative association can still count as a ‘close association.’

These illustrations show that inquiring into whether an individual is ‘affiliated’ with a tribe does not make the classification Judge Silverstein used ‘political.’ As a result, the jury instructions were constitutionally deficient.

D. The Defendant Objected To These Instructions Below

In the court below, the Defense objected that “any requirement . . . that the jury make a factual finding as to the defendant’s racial ancestry is clearly in violation of equal protection doctrine.” R. at 21. The trial court was thereby “apprised . . . of the true basis for [the Defense’s] objection.” LeBlanc, 612 F.2d at 1014.

E. The District Court’s Error Requires Reversal

Judge Silverstein’s jury instructions impermissibly violated William Wood’s equal protection rights. This error is ‘structural’ and requires automatic reversal, because equal protection rights are

“not designed to protect the defendant from erroneous conviction but instead protects some other interest.” Weaver, 137 S. Ct. at 1908).

In Batson v. Kentucky, the Supreme Court explained that “the harm from discriminatory jury selection extends beyond that inflicted on the defendant and the excluded juror to touch the entire community.” 476 U.S. 79, 87 (1986). In much the same way, the taint of discriminatory jury instructions extends beyond the result of the trial, impacting the entire community.

However, even if this error was not structural, to avoid reversal the Government must show that the guilty verdict rendered in *this* trial was undoubtedly unattributable to the district court judge’s error. Sullivan, 508 U.S. at 279. No such showing is possible. The jury was *not* instructed to make a finding whether Wood had the political status of an Indian, and the record is at *best* inconclusive on this point. Wood was not enrolled in, or a member of, a federally recognized tribe. R. at 35. In fact, the Saginaw Chippewa Indian Tribe of Michigan had taken explicit steps to sever Wood’s tribal citizenship. R. at 22. According to the tribe’s constitution, such disenrollment action eliminated *any* rights of membership. R. at 25. Given these circumstances, it cannot be said that “the elements of guilt that the jury *did* find necessarily embraced the one . . . misdescribed.” Neder v. United States, 527 U.S. 1, 35 (1999) (Scalia, J., concurring). We therefore urge reversal.

IV. THE JURY INSTRUCTION IS AN INCORRECT STATEMENT OF THE LAW

Even if the jury instructions do not violate the Equal Protection Clause, Judge Silverstein committed reversible error by instructing the jury that the Government must prove that “the defendant was *affiliated* with a federally recognized tribe, at or *around the time* of the offense,” R. at 21 (emphasis added), since these instructions are not consistent with the meaning of 18 U.S.C. § 1153.

A. ‘Affiliation’ Is Broader Than What Congress Intended

Although Chapter 53 of Section 18 of the U.S. Code defines ‘Indian country,’ see 18 U.S.C. § 1151, the MCA leaves the word ‘Indian’ undefined. In the absence of a statutory definition, all

circuits that have attempted to define ‘Indian’ have relied on a two-part test derived from Rogers, which broadly inquires whether an individual “(1) has some Indian blood; and (2) is recognized as an Indian by a tribe or by the federal government.” See, e.g., Prentiss, 273 F.3d at 1283.

Neither party disputes the use of this general two-part test—it is historically grounded, widely used to ascertain whether an individual falls under the jurisdiction of the MCA, and Congress has likely acquiesced to its use. What *is* disputed is Judge Silverstein’s phrasing of the second prong, which asks whether “the defendant was affiliated with a federally recognized tribe, at or around the time of the offense.” R. at 21. This prong was objected to by both sides at the jury instruction conference. R. at 17–18.

In considering how Judge Silverstein should have articulated the jury instructions’ second prong, considering the legislative history of a different law sheds some light. Title 25 U.S.C., Section 1301 of the U.S. Code defines ‘Indian’ as “any person who would be subject to the jurisdiction of the United States as an Indian under section 1153, title 18 [the MCA].” § 1301(4). In other words, Section 1301 adopts the MCA’s definition of Indian.

After introducing legislation to “make [§ 1301] permanent,” 137 CONG. REC. 23,673 (1991), Senator Daniel Inouye, then-Chairman of the Senate Committee on Indian Affairs, see Hawaii, U.S. SENATE, <https://www.senate.gov/states/HI/timeline.shtml> (last visited Jan. 22, 2023), explained how he interpreted the definition of ‘Indian’ in Section 1153: “[T]he term ‘Indian’ as used in Federal Indian law denotes a political relationship based on a person's membership in an Indian tribe . . . a person charged [under § 1153] as Indian [must] be actually enrolled in a tribe.” 137 CONG. REC. 23,673. If “such status is contested,” other factors may be considered: whether the “defendant is recognized as an Indian by his tribe[,] . . . [whether] the defendant has . . . enroll[ed] or [is] seeking to enroll in an Indian tribe, and by availing himself of services available to Indians because of their status of Indians.” Id. In other words, Senator Inouye read the MCA as requiring either membership

in a federally recognized tribe, or, alternatively, recognition as an Indian by the tribe or the federal government.

Senator Inouye's understanding of how the MCA defines 'Indian' helps explain Congress's acquiescence to how federal courts approach 'Indian' under the MCA. Indeed, every circuit that has addressed the definition of 'Indian' under the MCA has framed the second prong in some variation of "recognition as an Indian by the tribe or by the federal government." See United States v. Torres, 733 F.2d 449, 456 (7th Cir. 1984) ("recognized as an Indian by the Indian tribe and/or the Federal government"); United States v. Rainbow, 813 F.3d 1097, 1102 (8th Cir. 2016) ("is recognized as an Indian by an Indian tribe and/or the federal government"); United States v. Zepeda, 792 F.3d 1103, 1106–07 (9th Cir. 2015) ("the defendant's tribal or government recognition as an Indian") Prentiss, 273 F.3d at 1280 ("is recognized as an Indian by a tribe or by the federal government").

In fact, since 1977, when a federal circuit court first adopted the two-part test as the definition for Indian under the MCA, see United States v. Dodge, 538 F.2d 770, 786 (8th Cir. 1976) ("recognition by a tribe or society of Indians or by the federal government"), every court that has defined 'Indian' in the context of the MCA has formulated the second prong as a variant of 'recognition.' If Congress thought this interpretation was unfaithful to the meaning of the MCA, one would expect them to have intervened. However, Senator Inouye's perspective indicates that Congress has acquiesced to this formulation because Congress thinks it is accurate.

Judge Silverstein's language of 'affiliated with' is a notable departure from 'recognized as an Indian by the tribe or by the federal government.' 'Recognize' can be defined as "to acknowledge formally. . . [or] to admit as being of a particular status." Recognize, MERRIAM-WEBSTER DICTIONARY ONLINE, <https://www.merriam-webster.com/dictionary/recognize> (last visited Jan. 22, 2023). As such, an individual might be 'affiliated' with an Indian tribe by working at the tribe's casino without ever being 'recognized as' an Indian.

It must be acknowledged that some Ninth Circuit cases confusingly use the word ‘affiliated’ in their reasoning. However, the Ninth Circuit *never* instructs the jury to simply inquire whether an individual ‘is affiliated with’ an Indian tribe as Judge Silverstein did here. The Ninth Circuit’s Model Criminal Jury Instructions ask the jury to determine whether an individual

was a member of, or affiliated with, a federally recognized tribe, . . . by considering four factors, in declining order of importance . . . (1) Enrollment in a federally recognized tribe; (2) Government recognition . . . through receipt of assistance reserved only to individuals who are members, or are eligible to become members, of federally recognized tribes; (3) Enjoyment of the benefits of affiliation with a federally recognized tribe; and (4) Social recognition as someone affiliated with a federally recognized tribe through residence on a reservation and participation in the social life of a federally recognized tribe.

MANUAL OF MODEL CRIMINAL JURY INSTRUCTIONS FOR THE DISTRICT COURTS OF THE NINTH CIRCUIT 543 (2022). True enough, the fourth of these factors uses the word ‘affiliated.’ However, this factor considers affiliation only insofar as it contributes to ‘social recognition.’ Even to that extent, affiliation is the least of four distinct factors. No Ninth Circuit opinion has ever suggested that ‘affiliation’ alone satisfies the MCA’s second prong.

Given the unanimity of circuits and the acquiescence of Congress, the second prong of Judge Silverstein’s jury instructions were plainly inaccurate. There are many permissible ways to articulate a test about ‘recognition,’ but ‘affiliation’ represents a distinctly broader concept that is not faithful to the meaning of the MCA.

B. ‘Around the time’ is an unbridled judicial invention

Citing no legal authority or logical basis, Judge Silverstein told the jury that the government must prove that “the defendant was affiliated with a federally recognized tribe, at or *around the time* of the offense.” R. at 21 (emphasis added). However, the MCA applies to “[a]ny Indian who commits

. . . [a covered offense].” § 1153. This statutory text gives no indication of including individuals who were Indians ‘at or around the time’ they committed the offense.

In this regard, Judge Silverstein’s instructions are also inconsistent with the Supreme Court’s pronouncement that “members of tribes whose official status has been terminated by congressional enactment *are no longer subject*, by virtue of their status, to federal criminal jurisdiction under the Major Crimes Act.” Antelope, 430 U.S. at 647 (emphasis added). For instance, if a tribe’s official status is terminated ‘around the time’ of an offense, Judge Silverstein’s jury instructions would call for federal criminal jurisdiction even though Antelope makes clear that such an individual is “no longer subject to federal criminal jurisdiction.” Id.

Still, the *most* serious problem with Judge Silverstein’s ‘around the time’ language is that it is impermissibly vague. How long is ‘around?’ One month or one year? Congress could not possibly have intended the MCA to be so unclear as to when it applies. As the Ninth Circuit has explained,

In a prosecution under the [MCA], the government must prove that the defendant was an Indian at the time of the offense with which [they were] charged. If the relevant time for determining Indian status were earlier or later, a defendant could not “predict with certainty” the consequences of his crime at the time he commits it. . . . This would . . . undermine the “notice function” we expect criminal laws to serve.

Zepeda, 792 F.3d at 1113 (citing Appendi v. New Jersey, 530 U.S. 466, 478 (2000)).

This principle explains why Judge Silverstein’s ‘around the time’ language is not used in *any* jury instructions—MCA or otherwise. The Sixth Circuit’s Model Jury Instructions use ‘around the time’ in zero instructions, while using ‘at the time’ in 20 instructions. SIXTH CIRCUIT PATTERN CRIMINAL JURY INSTRUCTION COMMITTEE (2021). In fact, *no* model jury instruction in *any* circuit (that publishes their jury instructions online) uses ‘around the time.’ See PATTERN CRIMINAL JURY INSTRUCTIONS FOR THE DISTRICT COURTS OF THE FIRST CIRCUIT (2015); PATTERN JURY INSTRUCTIONS (CRIMINAL) FOR THE FIFTH CIRCUIT (2019); PATTERN CRIMINAL JURY